

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 4 and 5

Public Care Systems

Police, Firefighters, Medical Examiner, and
Forensic Sciences



40th ANNIVERSARY
of
HOME RULE



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 5

Title 4

Public Care Systems

to

Title 5

Police, Firefighters, Medical Examiner, and Forensic Sciences



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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 5 replaces any existing Volume 5 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

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LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

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Council of the District of Columbia

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General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.



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3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
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22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

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- 51. Social Security.

*Title has been enacted as law.

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DIVISION I. GOVERNMENT OF DISTRICT.

TITLE 4. PUBLIC CARE SYSTEMS.

Chapter

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CHAPTER 1. PUBLIC WELFARE SUPERVISION.

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- 4-107. Institutional personnel under supervision of Board; duties of superintendent; appointment and discharge of personnel.
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§ 4-101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished. [Omitted].

Omitted.

§ 4-102. Board of Public Welfare — Created; successor to abolished Boards; employees transferred. [Omitted].

Omitted.

§ 4-103. Board of Public Welfare — Composition; appointment; term of office; vacancies; residency requirement; removal; compensation. [Omitted].

Omitted.

§ 4-104. Board of Public Welfare — Officers; meetings; authority to make rules, regulations, and orders. [Omitted].

Omitted.

§ 4-105. Director of Public Welfare.

The Mayor of the District of Columbia, upon the nomination of the Board, is hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Mayor of the District of Columbia upon recommendation of the Board. The Mayor of the District of Columbia is authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205§§ , 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prostitution, duties of Director concerning persons found guilty, see § 22-2703.

Regulations, protection of life, health, and property, Council and Mayor, authorization to make and enforce, see § 1-303.03.

Prior Codifications. — 1981 Ed., § 3-105.

1973 Ed., § 3-105.

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to at the end of the first sentence in this section, means the Act of March 16, 1926, 44 Stat. 209, ch. 58.

Board of Public Welfare abolished: See note to § 4-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-106. Institutions placed under control of Board.

The Board shall have complete and exclusive control and management of the following institutions of the District of Columbia:

- (1) The workhouse at Occoquan in the State of Virginia;
- (2) The reformatory at Lorton in the State of Virginia;
- (3) The Washington Asylum and Jail;
- (4) The National Training School for Girls, in the District of Columbia and at Muirkirk in the State of Maryland;
- (5) The Gallinger Municipal Hospital;
- (6) The Tuberculosis Hospital;
- (7) The Home for the Aged and Infirm;
- (8) The Municipal Lodging House;
- (9) The Industrial Home School;
- (10) Industrial Home School for Colored Children; and
- (11) Forest Haven in Anne Arundel County, in the State of Maryland.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

Cross references. — Forest Haven, control and supervision, see § 44-1402 et seq.

Industrial Home School, control and management, see § 44-1301.

Management and regulation of workhouse, reformatory, asylum and jail, see § 24-211.02.

Prior Codifications. — 1981 Ed., § 3-106. 1973 Ed., § 3-106.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

The District Training School was redesignated as Forest Haven by § 1(1) of the Act of October 22, 1970, 84 Stat. 1087, Pub. L. 91-490.

Statutory provisions for both the National Training School for Girls and the Industrial Home School for Colored Children were formerly codified in D.C. Code, § 32-901 to 32-913

1981 Ed. These provisions were omitted from codification as obsolete in the 1973 Edition of the D.C. Code in light of the Act of August 3, 1951, 62 Stat. 154, ch. 291, § 1, which provided that no new commitments to the National Training School for Girls should be made after August 3, 1951.

Transfer of Functions. — Management and regulation of the workhouse at Occoquan in the State of Virginia, the reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail was vested in the Department of Corrections by the Act of June 27, 1946, 60 Stat. 320, ch. 507, § 2. The Department of Corrections was abolished and another Department of Corrections established under direction and control of a Commissioner and

headed by a Director to take care of persons committed to the workhouse, Lorton Reformatory, Women's Reformatory and the D.C. Jail.

The direction and control of the Gallinger Municipal Hospital and the Tuberculosis Hospital had been transferred to the Health Department of the District of Columbia by the Act of June 29, 1937, 50 Stat. 376, ch. 403, § 1. Reorganization Order No. 57, as amended, redesignated as Organization Order No. 141 and amended, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. Prior to its redesignation the Order abolished the previously existing Gallinger Mu-

nicipal Hospital and transferred all of its positions and functions to the new Department. It further provided that within the Department the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 4-107. Institutional personnel under supervision of Board; duties of superintendent; appointment and discharge of personnel.

The superintendents and all other employees engaged in the operation of the institutions enumerated in § 4-106 shall be subject to the supervision of the Board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the Director of Public Welfare. The superintendent and all other employees of each of the institutions enumerated in § 4-106 shall be appointed by the Mayor of the District of Columbia upon nomination by the Board and shall be subject to discharge by the Mayor upon recommendation of the Board.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

Cross references. — Superintendents of prisons, see § 24-201.11 et seq.

Prior Codifications. — 1981 Ed., § 3-107. 1973 Ed., § 3-107.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-108. Rules and regulations relating to admissions of persons and administration of institutions.

It shall be the duty of the Council of the District of Columbia to make such rules and regulations relating to the admission of persons to, and it shall be the duty of the Mayor to make such rules and regulations relating to the administration of, the institutions hereinbefore referred to, as will promote

discipline and good conduct of inmates and employees and efficiency and economy in the operation of these institutions.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

Prior Codifications. — 1981 Ed., § 3-108.
1973 Ed., § 3-108.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(81) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-20.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-109. Registration records; system of accounts.

Under the authority herein granted, the Board may prescribe forms of record keeping to secure accuracy and completeness in the registration of persons under care and the services rendered in their behalf. The Board may recommend to the Comptroller General of the United States, and the Comptroller General may prescribe, so far as practicable, a uniform system of accounts to record receipts and disbursements and to determine comparative costs of operation.

(Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

Prior Codifications. — 1981 Ed., § 3-109.
1973 Ed., § 3-109.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-110. Powers of Board of Charities transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Charities shall be vested in the Board, and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the Board:

(1) To provide for the transportation to their respective places of residence of nonresident indigent persons, and to provide for indigent persons, who are legal residents of the District of Columbia, medical care and treatment when necessary, under contracts with such hospitals as are or may be designated by law;

(2) To provide for the transportation to their respective places of residence of nonresident persons with mental illness and to afford hospital care for indigent persons with mental illness who are legal residents of the District of Columbia in such hospital or hospitals as are or may be designated by law; and

(3) To provide for all other aged, infirm, or needy persons, in the manner authorized by law or by appropriations enacted by the Congress.

(Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10; Oct. 1, 1976, D.C. Law 1-87, § 5, 23 DCR 2544; Apr. 24, 2007, D.C. Law 16-305, § 15, 53 DCR 6198.)

Cross references. — Mentally ill, financial responsibility for care of hospitalized persons, see § 21-586.

Mentally ill, nonresidents, see § 21-551.

Prior Codifications. — 1981 Ed., § 3-110. 1973 Ed., § 3-110.

Effect of amendments. — D.C. Law 16-305 substituted “persons with mental illness” for “insane persons”, throughout the section.

Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 1-1210.

Legislative history of Law 16-305. — Law

16-305, the “People First Respectful Language Modernization Act of 2006”, was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

CASE NOTES

Care and support of persons with mental illness.

Insofar as “residence” was at issue in determining retarded orphan’s ability to claim medical care from the District of Columbia government, the matter to be decided was whether, in light of all available indicia of residence, independent of her confinement at St. Elizabeths

Hospital, orphan’s presence in the District could properly be accounted for as the product of something more than a temporary sojourn; burden on the residence issue was with the government. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

§ 4-111. Supervision over institutions supported by congressional appropriations.

The said Board of Public Welfare shall visit, inspect, and maintain a general supervision over all institutions, societies, or associations of a charitable, eleemosynary, correctional, or reformatory character which are supported in whole or in part by appropriations of Congress, made for the care or treatment of residents of the District of Columbia; and no payment shall be made to any such charitable, eleemosynary, correctional, or reformatory institution for any resident of the District of Columbia who is not received and maintained therein pursuant to the rules established by such Board of Public Welfare, except in the case of persons committed by the courts, or abandoned infants needing immediate care.

(June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

Prior Codifications. — 1981 Ed., § 3-111. 1973 Ed., § 3-111.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-112. Submission of plans for new institutions; investigation of institutions.

All plans for new institutions shall, before adoption of the same, be submitted to the Board of Public Welfare for suggestion and criticism. The Mayor of the District of Columbia may at any time order an investigation by the Board, or a committee of its members, of the management of any penal, charitable, or reformatory institution in the District of Columbia; and said

Board, or any authorized committee of its members, when making such investigation, shall have power to send for persons and papers and to administer oaths and affirmations; and the report of such investigation, with the testimony, shall be made to the Mayor.

(June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

Prior Codifications. — 1981 Ed., § 3-112.
1973 Ed., § 3-112.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-113. Members and employees to have no interest in contracts.

No member or employee of said Board shall be either directly or indirectly interested in any contract for building, repairing, or furnishing any institution which by this chapter the Board of Public Welfare is authorized to investigate and supervise.

(June 6, 1900, 31 Stat. 665, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

Cross references. — Charitable institutions, conflicts of interest, see § 44-714.

Prior Codifications. — 1981 Ed., § 3-113.

1973 Ed., § 3-113.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-114. Powers of Mayor over dependent children.

(a) The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") may:

(1) Make temporary provision for the care of children pending investigation of their status;

(2) Have the care and legal guardianship, including the power to consent to or arrange for adoption in appropriate cases, of:

(A) Children who may be committed to the Mayor as wards of the District of Columbia by courts of competent jurisdiction; and

(B) Children who are relinquished by their parents to the Mayor or whose relinquishment is transferred to the Mayor by a licensed child-placing agency under § 4-1406;

(3) Make such provisions for the care and maintenance of such children in private homes, under contract, including adoption subsidy pursuant to § 4-301, or in public or private institutions, as the welfare of such children may require; and

(4) Provide care and maintenance for substantially retarded children who

may be received upon application or upon court commitment, in institutions or homes or other facilities equipped to receive them, within or without the District of Columbia.

(b) The Mayor shall cause the wards of the District of Columbia placed out under temporary care to be visited as often as may be required to safeguard their welfare.

(c) The Mayor may, where appropriate, secure an assignment of rights from a parent whose child is in the custody of a person or agency receiving foster care maintenance payments under Part E in Subchapter IV of the Social Security Act (42 U.S.C. § 670 et seq.).

(Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 2, 1974, 87 Stat. 1057, Pub. L. 93-241, § 1(a)(1); Feb. 24, 1987, D.C. Law 6-166, § 33(e), 33 DCR 6710.)

Cross references. — Children, age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-114.
1973 Ed., § 3-114.

Legislative history of Law 6-166. — Law 6-166, the “D.C. Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor’s Order 87-273, December 10, 1987.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Government Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-115. Limitation in number of dependent children.

(a) The number of children who have been in care pursuant to § 4-114(a)(2) for a period of 2 years or more, should be:

- (1) Not more than 1,283 children as of September 30, 1984;
- (2) Not more than 965 children as of September 30, 1985;
- (3) Not more than 1,113 children as of September 30, 1986;
- (4) Not more than 920 children as of September 30, 1987;
- (5) Not more than 62% of the total number of children in foster care as of September 30, 1992;
- (6) Not more than 60% of the total number of children in foster care as of September 30, 1993; and
- (7) Not more than 58% of the total number of children in foster care as of September 30, 1994.

(b) The following steps will be taken to achieve these goals:

- (1) Increase the number of children referred for adoption services through purchase of service contracts;

(2) Conduct permanency planning for all children in foster care, including an annual administrative review for each child;

(3) Provide for decreased caseloads and intensive services with emphasis on prevention of placements or early reunification of families;

(4) Repealed; and

(5) Strengthen programs to assist teenage youth in preparing for independent living.

(c) During the fiscal years ending September 30, 1992, September 30, 1993, and September 30, 1994, the Director of the Department of Human Services ("Director") shall report quarterly to the Council of the District of Columbia ("Council") regarding:

(1) The total number of children in care, their ages, legal statuses, and goals;

(2) The number of children who entered care during the previous quarter (by month), their ages, legal statuses, and the primary reasons they entered care;

(3) The number of children who have been in care for 24 months or longer, the number of children who became part of this class during the previous quarter (by month), and the ages and legal statuses of these children; and

(4) The number of children who left care during the previous quarter (by month), the number of children in this class who had been in care for 24 months or longer, the ages and legal statuses of these children, and the reasons for their removal from care.

(d) On November 1 of each year, the Director shall submit to the Council a summary of the cases terminated during the previous fiscal year and any difficulties encountered in reaching the goal stated in subsection (a) of this section.

(May 17, 1983, D.C. Law 5-4, § 3, 30 DCR 1576; Oct. 8, 1983, D.C. Law 5-30, § 2, 30 DCR 3876; Sept. 26, 1984, D.C. Law 5-107, § 2, 31 DCR 3388; Apr. 11, 1986, D.C. Law 6-104, § 2, 33 DCR 1160; Oct. 1, 1992, D.C. Law 9-166, § 2, 39 DCR 5819.)

Prior Codifications. — 1981 Ed., § 3-114.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Foster Care Goals Act Temporary Amendment Act of 1992 (D.C. Law 9-84, March 20, 1992, law notification 39 DCR 2124).

Emergency legislation. — For temporary amendment of section, see § 2 of the Foster Care Goals Act of 1983 Emergency Amendment Act of 1991 (D.C. Act 9-130, January 9, 1992, 39 DCR 327).

Legislative history of Law 5-4. — Law 5-4, the "Foster Care Goal Temporary Act of 1983," was introduced in Council and assigned Bill No. 5-94, which was retained by Council. The Bill was adopted on the first and second readings on February 15, 1983, and March 15, 1983, respectively. Signed by the Mayor on March 24, 1983, it was assigned Act No. 5-18 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 5-30. — Law 5-30, the "Foster Care Goals Act of 1983," was introduced in Council and assigned Bill No. 5-199, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 28, 1983, and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-52 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-107. — Law 5-107, the "Foster Care Goals Act Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-404, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 12, 1984, and June 26, 1984, respectively. Signed by the Mayor on June 29, 1984, it was

assigned Act No. 5-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-104. — Law 6-104, the “Foster Care Goals Act Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-239, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 14, 1986 and January 28, 1986, respectively. Approved without the signature of the Mayor on February 14, 1986, it was assigned Act No. 6-133 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-166. — Law 9-166, the “Foster Care Goals Act of 1983 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-373, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respec-

tively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-264 and transmitted to both Houses of Congress for its review. D.C. Law 9-166 became effective on October 1, 1992.

Editor’s notes. — Reports required by Director of Department of Human Services: Section 2 of D.C. Law 5-4 provided that the Director of the Department of Human Services shall report to the Council of the District of Columbia monthly regarding the number of foster care cases that have been terminated during the previous month and number of children entering care during the previous month, and that on October 1 of each year, the Director shall submit a summary report of the cases terminated during the prior fiscal year and any difficulties encountered in reaching the goal stated in § 3 of D.C. Law 5-4. Section 4(b) of D.C. Law 5-4 provided that the act shall expire on the 180th day after May 17, 1983.

§ 4-116. Children over whom Board shall have supervision.

Said Board of Public Welfare shall have the care and supervision of the following classes of children:

(1) All children committed under § 44-1509;

(2) All children who are destitute of suitable homes and adequate means of earning an honest living, all children abandoned by their parents or guardians, all children of habitually drunken or vicious or unfit parents, all children habitually begging on the streets or from door to door, all children kept in vicious or immoral associations, all children known by their language or life to be vicious or incorrigible whenever such children may be committed to the care of the Board by the Family Division of the Superior Court; provided, that the laws regulating the commitment of children to the training schools of the District shall not be deemed to be repealed in any part by this section;

(3) Such children as the Board of Trustees of the National Training School for Boys may, in their discretion, commit to the Board of Public Welfare, and power is hereby given the Board of Trustees of the said School to commit any inmate thereof to the said Board of Public Welfare, conditionally upon the good behavior of the child so committed;

(4) Under the rules to be established by the Council of the District of Columbia children may be received and temporarily cared for pending investigation or judgment of the court.

(July 26, 1892, 27 Stat. 269, ch. 250, § 4; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; May 27, 1908, 35 Stat. 380, ch. 200; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 159(b).)

Cross references. — Age of majority, see § 46-101.

Blindness, prevention in newborns, see § 7-802.

Employment of minors, revocation of work

permit for engaging in prohibited work, see § 32-219.

Family Division proceedings, proceeding regarding delinquency, neglect, or need of supervision, see § 16-2301 et seq.

Prior Codifications. — 1981 Ed., § 3-116. 1973 Ed., § 3-116.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

The Board of Trustees of the National Training School for Boys, referred to in paragraph (3) of this section, was abolished and the School and its functions, including the functions of the Board of Trustees, were transferred to the Department of Justice by Reorganization Plan No. 2 of 1939. The School was operated until May 15, 1968, when it was closed pursuant to an order of the Attorney General.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(82) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Criminal acts of minors.
Effect of marriage.

Criminal acts of minors.

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. D.C. Code 1940, §§ 3-106, 3-114, 3-116, 11-902, 11-906, 11-908 to 11-918, 11-915, 32-209, 32-815; Reorganization Plan No. 2, § 3, 5 U.S.C. following section 133t. In re Kroll, 43 A.2d 706, 1945 D.C. App. LEXIS 111 (Cr.App. 1945).

Effect of marriage.

Marriage of incorrigible female child commit-

ted to national training school does not entitle her to release on habeas corpus. Code, § 1126, D.C. Code 1929, T. 15, § 58; Act July 9, 1888, 25 Stat. 245, as amended by Act June 26, 1912, 37 Stat. 171, 20 U.S.C. §§ 162, 163; Act May 3, 1876, § 8, 20 U.S.C. § 145 and note; Act Feb. 13, 1885, 23 Stat. 302; Act July 26, 1892, § 5, 27 Stat. 268, 39 U.S.C. § 422; 46 U.S.C. § 145; Act March 19, 1906, § 8, 34 Stat. 73. Richardson v. Browning, 18 F.2d 1008, 1927 U.S. App. LEXIS 2125 (1927).

§ 4-117. Investigation of children; confidentiality of records; study of physical and mental conditions.

The antecedents, character, and condition of life of each child received by the Board shall be investigated as fully as possible, and the facts learned entered in permanent records, in which shall also be noted the subsequent history of each child, so far as it can be ascertained. Such records shall be confidential but may be made available in the discretion of the Board. Provision shall be made for study of the physical and mental conditions of children received for care in order that care for each child may be planned to meet his particular physical and mental needs.

(July 26, 1892, 27 Stat. 269, ch. 250, § 6; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 4.)

Cross references. — Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-118.

1973 Ed., § 3-118.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-118. Commitments by Family Division of Superior Court; placement by Board.

The judges of the Family Division of the Superior Court of the District of Columbia are hereby authorized and empowered, at their discretion, to commit to the custody and care of the Board of Public Welfare of the District of Columbia children under 17 years of age who shall be convicted of petty crimes or misdemeanors which may be punishable with fine or imprisonment; and said Board of Public Welfare shall place, under contract, such children in such suitable homes, institutions, or training schools for the care of children as it may deem wise and proper.

(Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 1; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 159(c).)

Cross references. — Family Division proceedings, proceeding regarding delinquency, neglect, or need of supervision, see § 16-2301 et seq.

Prior Codifications. — 1981 Ed., § 3-119. 1973 Ed., § 3-120.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

CASE NOTES

Provision of services.

Department of Human Resources' duty to provide services for delinquent juveniles arises concurrently with transfer of legal custody by family division of superior court to board; family division is not required to commit juveniles to custody of Department of Human Resources, but unless court does so, agency will have no corresponding duty to pay for child's care. D.C. Code § 3-120. In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

Department of Human Resources has no obligation to provide services for delinquent juveniles, unless and until family division of superior

court vests legal custody of child with that agency. D.C. Code § 3-120. In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

Family division of superior court did not have authority to order the Department of Human Resources to pay for specific treatment program for delinquent juvenile, while court retained custody of juvenile on probation, since family division can order services from agency only pursuant to transfer of legal custody to agency. D.C. Code §§ 3-120, 16-2301(21), 16-2320(a)(5)(i). In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

§ 4-119. Commitment of children under 17 years of age.

No court shall commit a child under 17 years of age, charged with or convicted of a petty crime or misdemeanor punishable by a fine or imprisonment, to a jail, workhouse, or police station, but if such child be unable to give bail or pay a fine, it may be committed to the Board of Public Welfare temporarily or permanently, in the discretion of the court, and said Board shall make some suitable provision for said child outside the inclosure of any jail, workhouse, or police station, or said court may commit such child to the National Training School under the laws now providing for such commitment.

(Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 2; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

Cross references. — Age of majority, see § 46-101.

Employment of minors, revocation of work permit for engaging in prohibited work, see § 32-219.

Family Division proceedings, proceeding regarding delinquency, neglect, or need of supervision, see § 16-2301 et seq.

Prior Codifications. — 1981 Ed., § 3-120. 1973 Ed., § 3-121.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

Statutory provisions for the National Training School for Boys and the National Training School for Girls were formerly codified in Chap-

ters 13 and 14 of Title 44, respectively. These provisions were omitted from codification as obsolete in the 1973 Edition of the D.C. Code. As regards the National Training School for Boys, the School and its functions were transferred to the Department of Justice by Reorganization Plan No. 2 of 1939. The School was operated until May 15, 1968, when it was closed pursuant to an order of the Attorney General. As regards the National Training School for Girls, the Act of August 3, 1951, 62 Stat. 154, ch. 291, § 1, provided that no new commitments to the School should be made after August 3, 1951.

CASE NOTES

ANALYSIS

In general.

Provision of services.

In general.

District of Columbia police court has jurisdiction to commit minor under 17 years to jail to await action of grand jury on charge of house-breaking. Code, § 43, D.C. Code 1929, T. 8, § 125, T. 18, § 152; Juvenile Court Act, §§ 8, 25. *Peak v. Reed*, 24 F.2d 619, 1928 U.S. App. LEXIS 2115 (1928).

Provision of services.

Department of Human Resources' duty to provide services for delinquent juveniles arises concurrently with transfer of legal custody by family division of superior court to board; family division is not required to commit juveniles to custody of Department of Human Resources,

but unless court does so, agency will have no corresponding duty to pay for child's care. D.C. Code § 3-120. In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

Department of Human Resources has no obligation to provide services for delinquent juveniles, unless and until family division of superior court vests legal custody of child with that agency. D.C. Code § 3-120. In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

Family division of superior court did not have authority to order the Department of Human Resources to pay for specific treatment program for delinquent juvenile, while court retained custody of juvenile on probation, since family division can order services from agency only pursuant to transfer of legal custody to agency. D.C. Code §§ 3-120, 16-2301(21), 16-2320(a)(5)(i). In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

§ 4-120. Duties of Trustees of National Training School for Girls transferred.

The duties prior to March 16, 1926, imposed by law upon the Board of Trustees of the National Training School for Girls concerning the admission, care, parole, and discharge of inmates shall be vested in the Board.

(Mar. 16, 1926, 44 Stat. 210, ch. 58, § 12.)

Prior Codifications. — 1981 Ed., § 3-121. 1973 Ed., § 3-122.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

Statutory provisions for the National Training School for Girls were formerly codified in D.C. Code, §§ 32-901 to 32-913. These provi-

sions were omitted from codification as obsolete in the 1973 Edition of the D.C. Code in light of the Act of August 3, 1951, 62 Stat. 154, ch. 291, § 1, which provided that no new commitments to the School should be made after August 3, 1951.

§ 4-121. Annual budget; report of activities; recommendations; study of social and environmental conditions.

It shall be the duty of the Board to prepare and submit to the Mayor of the District of Columbia, in such manner as he shall require, an annual budget itemizing the appropriations necessary to the proper discharge of the duties imposed by law upon the Board and for the support and maintenance of the institutions under its management. The Board shall also submit to the Mayor an annual report of its activities and the work carried on under its direction, together with its recommendations for securing more efficient and humane care for all persons in need of public assistance. The Board shall study from time to time the social and environmental conditions of the District of Columbia and shall incorporate in its reports the results thereof and recommendations designed to further safeguard the interests and well-being of the children of the District of Columbia and to diminish and ameliorate poverty and disease and to lessen crime. Except in the placement of children in institutions under the public control, the Board shall when practicable place them in institutions or homes of the same religious faith as the parents; provided, that whenever the Board shall for any reason place the child with any organization, institution, or individual other than of the same religious faith as that of the parents of the child, the Board shall set forth the reason for such action in the record of the case. Inmates of public institutions shall be given the fullest opportunity for the practice of their religion.

(Mar. 16, 1926, 44 Stat. 210, ch. 58, § 13.)

Cross references. — Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-122.
1973 Ed., § 3-123.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 4-122. Visitation of wards.

A ward placed outside the District of Columbia and the States of Virginia and Maryland shall be visited not less than once a year by a voluntary agent or correspondent of the Board of Public Welfare.

(Mar. 2, 1927, 44 Stat. 1323, ch. 271.)

Prior Codifications. — 1981 Ed., § 3-123.
1973 Ed., § 3-124.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-123. Discharge from guardianship.

The Board of Public Welfare shall have power, upon proper showing, in its discretion, to discharge from guardianship any child committed to its care.

(Mar. 2, 1927, 44 Stat. 1323, ch. 271.)

Prior Codifications. — 1981 Ed., § 3-124.
1973 Ed., § 3-125.

References in text. — Board of Public Welfare abolished: See note to § 3-102.

§ 4-124. Duties and responsibilities of Board.

The Board of Public Welfare of the District of Columbia [abolished; see now the Department of Human Services] established by § 4-102 [omitted], shall, in addition to the other duties and responsibilities imposed upon it by law, have the following duties and responsibilities:

(1) To investigate the circumstances affecting children handicapped by dependency, neglect or mental defect, or who may be in danger of becoming delinquent, and to provide such services for the protection and care of such children as will assist in conserving satisfactory home life;

(2) To safeguard the welfare of children born out of wedlock, by providing services for their mothers and fathers and in caring for and in obtaining support for such children;

(3) To assume responsibility for the care and support of dependent or neglected children under the age of 18 years needing public care away from their own homes, when such need has been determined by careful investigation and is requested by the parent or parents or any person or agency responsible for the care of such children;

(4) To make suitable provision for the reception and care of children in need of detention pending court action, or who are temporarily detained under court order, or who are temporarily homeless; and

(5) Upon proper showing, in its discretion, to discharge from custody or guardianship any child committed to its care.

(Jan. 12, 1942, 55 Stat. 882, ch. 649, § 1; Oct. 1, 1976, D.C. Law 1-87, § 6, 23 DCR 2544.)

Cross references. — Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-125.
1973 Ed., § 3-126.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act of 1976," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal

Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-125. Assisting child to leave institution without authority; concealing such child; duty of police.

Any person who shall entice or attempt to entice, away from any home or institution, any child legally committed to the Board of Public Welfare and

placed by said Board in such home or institution, or any person who shall assist or attempt to assist any such child to leave without permission such home or institution, knowing such child to be an inmate of such institution or to have been placed in such home, or any person who shall harbor, conceal, or aid in harboring or concealing any such child who shall be absent without leave from a home or institution in which he has been placed by the Board of Public Welfare, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall pay a fine of not less than \$10 nor more than \$100; and any policeman shall have power, and it is hereby made his duty, to take into custody any child, when in his power to do so, who shall be absent without leave from a home or institution in which he has been placed and return him thereto or to the Receiving Home.

(Jan. 12, 1942, 55 Stat. 883, ch. 649, § 2.)

Cross references. — Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-126. 1973 Ed., § 3-127.

Emergency legislation. — For temporary

(90 day) addition, see § 5039 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

References in text. — Board of Public Welfare abolished: See note to § 4-102.

§ 4-126. Assistance application form standardization.

(a) All District government assistance application forms (“AAF”) for assistance from the District government, or leading to federal or private assistance, shall:

(1) Require the applicant to state whether he or she is a veteran; and

(2) Provide contact information for the Office of Veterans Affairs, established by § 49-1002.

(b)(1) An agency that receives AAFs shall establish a procedure to retain AAFs that indicate that the applicant is a veteran separately from AAFs that do not so indicate.

(2) An agency that receives an AAF that indicates that the applicant is a veteran shall forward this information to the Office of Veterans Affairs for its use and record retention.

(c) Upon August 16, 2008, all agencies shall meet the requirements of this section by providing the required information on the AAF or as an attachment to the AAF.

(Aug. 16, 2008, D.C. Law 17-219, § 5039, 55 DCR 7598.)

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned

Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 5038 of D.C. Law 17-219 provided that subtitle Q of title V of the act may be cited as the “Assistance Application Form Standardization Act of 2008”.

PUBLIC ASSISTANCE

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Subchapter I. Definitions.

§ 4-201.01. Definitions.

For the purposes of this chapter, the term:

(1) Repealed.

(1A) "Adult" means a person who is not a minor.

(1B) "Assistance unit" means all individuals whose needs, income and resources are considered in determining eligibility for, and the amount of, public assistance.

(1C) "Caretaker relative" means a relative by blood, half-blood, or legal adoption caring for a dependent child, who is a child's parent, or, if a parent is not in the home exercising responsibility for the care and control of the dependent child, the child's sibling; aunt; uncle; first cousin; first cousin once removed; second cousin; nephew; niece; grandparent; step-parent; step-sibling; relative of a preceding generation as denoted by prefixes of grand-, great-, great-great-, or great-great-great-; or the spouse of a parent or other relative listed in this paragraph, even after the marriage is terminated by death or divorce.

(1D) Repealed.

(2) "Council" means the Council of the District of Columbia.

(2A) "Department" means the Department of Human Services of the District of Columbia, or any successor organizational unit (in whole or in part).

(3) "District" means the District of Columbia government.

(3A) "GAC" means the General Assistance for Children program established by § 4-205.05a.

(4) Repealed.

(4A) "Head of assistance unit" means:

(A) The adult parent of a minor child, if both are part of the same single-parent assistance unit;

(B) The principal household income earner or the nonincapacitated parent in a two-parent assistance unit, if that person is an adult parent of a minor child, and the parent and child are part of the same assistance unit;

(C) A caretaker relative residing with, and providing care for, a minor child, if the caretaker relative and child are part of the same assistance unit; or

(D) A minor parent of a minor child, if the parent and child are part of the same assistance unit and there are no adults in the assistance unit.

(5) “Mayor” means the Mayor of the District of Columbia or the agents, agencies, officers, and employees designated by him or her to perform any function vested in them by this chapter.

(5A) “Minor” means a person who is:

(A) Less than 18 years of age; or

(B) 18 years of age, a full-time student in a secondary school or in the equivalent level of vocational or technical training, and who is expected to graduate from such school or training by the person’s 19th birthday.

(5B) “Parent” means a child’s natural or adoptive parent.

(5C) “Parent who is the principal household income earner” means whichever parent, in a home in which both parents of a minor child are living, earned the greater amount of income in a 24-month period, the last month of which immediately preceded the month in which a TANF application was filed.

(5D) “POWER” means the Program on Work, Employment, and Responsibility established by § 4-205.72.

(6) “Public assistance” means payment in or by money, medical care, remedial care, goods or services to, or for the benefit of, needy persons.

(7) “Recipient” means a person to whom or on whose behalf public assistance is granted.

(8) “State” means each of the states of the United States. The term “state” includes Puerto Rico, Guam, and the United States Virgin Islands.

(9) “Stepparent” means a person who is living in the home of a minor child for whom TANF or POWER is requested, and who is legally married to the natural or adoptive parent of the child.

(10) “TANF” means the Temporary Assistance for Needy Families Program established by subchapter II of this chapter.

(11) “IV-D agency” means the organizational unit, or any successor organizational unit (in whole or in part), that is responsible for administering or supervising the administration of the District’s State Plan under title IV, Part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to paternity establishment and the establishment, modification, and enforcement of child support orders and certain spousal support orders (those in which the spouse or former spouse is living with a child for whom the spousal support obligor also owes support).

(Apr. 6, 1982, D.C. Law 4-101, § 101, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(a), 38 DCR 4205; Feb. 5, 1994, D.C. Law 10-68, § 10(a), 40 DCR 6311; Mar. 20, 1998, D.C. Law 12-60, § 701(a), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(a), 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 135, 47 DCR 520; Dec. 17, 2009, D.C. Law 18-94, § 2(a), 56 DCR 8521.)

Cross references. — Public postsecondary education reorganization, tuition grants, “eligible parent” defined, see § 38-1207.01.

Prior Codifications. — 1981 Ed., § 3-201.1.

Effect of amendments. — D.C. Law 13-91, in par. (10), substituted “Temporary Assistance for Needy Families Program” for “Temporary Assistance for Needy Families program”.

D.C. Law 18-94 repealed par. (1D); and, in subsec. (5C), substituted “filed” for “filed on the basis of the unemployment of that parent”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(a) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 7(b) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(a) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(a) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(a) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 4(b) of TANF-Related Medicaid Managed Care Program Technical Clarification Temporary Amendment Act of 1999 (D.C. Law 12-277, April 27, 1999, law notification 46 DCR 4283).

Emergency legislation. — For temporary amendment of section, see § 101(a) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(a) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(a) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 2(a) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(a) of the

Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(a) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 701(a) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 701(a) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of § 16 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552), see § 4(b) of the TANF-Related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287).

For temporary amendment of section, see § 2(a) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(a) of the Self-Sufficiency Promotion Legislation Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(a) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(a) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary effect of the Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130) and regulations and procedures governing existing programs in the District of Columbia Public Assistance Act of 1982 (D.C. Law 4-101, § 4-201.01 et seq.), see § 16 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 16 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 16 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 16 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2(a) of Public Assistance Emergency Amendment Act of 2009 (D.C. Act 18-198, October 9, 2009, 56 DCR 8132).

Legislative history of Law 4-79 and 4-101. — Many of the substantive changes contained in D.C. Law 4-101 regarding the Aid to Families with Dependent Children program

are a reformulation of the changes made in D.C. Law 4-79, the Aid to Families with Dependent Children Federal Conformity Act of 1981. Law 4-79 was introduced in Council and assigned Bill No. 4-333, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 24, 1981, and December 15, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-133 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-101. — Law 4-101, the “District of Columbia Public Assistance Act of 1982,” was introduced in Council and assigned Bill No. 4-369, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 22, 1982, it was assigned Act No. 4-159 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on

December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 18-94. — Law 18-94, the “Public Assistance Amendment Act of 2009,” as introduced in Council and assigned Bill No. 18-6, which was referred to the Committee on Human Services. The bill as adopted on first and second readings on September 22, 2009, and October 6, 2009, respectively. Effective without the Mayor’s signature on October 21, 2009, it was assigned Act No. 18-221 and transmitted to both Houses of Congress for its review. D.C. Law 18-94 became effective on December 17, 2009.

Delegation of Authority. — Delegation of authority pursuant to D.C. Act 12-425, the “Self-Sufficiency Promotion Congressional Review Amendment Act of 1999,” see Mayor’s Order 99-65, April 26, 1999 (46 DCR 4230).

Editor’s notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Self-Sufficiency Promotion Amendment Act of 1998: D.C. Law 12-241 provided that the Public Assistance Temporary Amendment Act of 1998, effective July 24, 1998 (D.C. Law 12-130; 45 DCR 3084), any other regulations and procedures governing existing programs in the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code § 4-201.01 et seq.), and any regulations and procedures promulgated pursuant to the Self-Sufficiency Promotion Emergency Amendment Act of 1998, effective June 9, 1998 (Act 12-372; 45 DCR 4270), the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998, effective July 31, 1998 (Act 12-425; 45 DCR 5682), or the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 shall remain in effect until superseded by regulations and procedures developed and implemented pursuant to the Self-Sufficiency Promotion Amendment Act of 1998.

CASE NOTES

ANALYSIS

Eligibility limitations.
Public assistance.

Eligibility limitations.

Favorable ruling by district court would not alleviate particularized injury alleged by Medicaid recipients whose prescription drug coverage had been denied, terminated, reduced, or delayed, as required to establish redressability for purposes of Article III standing in action alleging defendants' failure to provide recipients with adequate and timely notice, opportunity for fair hearing, or opportunity for reinstated coverage pending hearing violated Fifth Amendment's Due Process Clause, Social Security Act (SSA), and District of Columbia law, since recipients sought only injunctive and declaratory relief rather than reimbursement for any expenses incurred as result of denial, termination, reduction, or delay in prescription drug coverage. *NB v. District of Columbia*, 800 F.Supp.2d 51, 2011 U.S. Dist. LEXIS 86908 (2011), reversed by, remanded by 682 F.3d 77, 401 U.S. App. D.C. 184, 2012 U.S. App. LEXIS 11606 (2012).

Medicaid recipients alleged injuries, arising from denial, termination, reduction, or delay in their prescription drug coverage, were not fairly traceable to acts of named defendants, as required to establish causal connection for purposes of Article III standing in action alleging defendants' failure to provide them with adequate and timely notice, opportunity for fair hearing, or opportunity for reinstated coverage pending hearing violated Fifth Amendment's Due Process Clause, Social Security Act (SSA), and District of Columbia law, since doctors, rather than defendants, failed to authorize prescriptions, fear or apprehension arising from prior authorization requirements was not traceable to defendants, and denial of coverage in was often due to mistake by pharmacy or electronic claims management system rather than decision of defendants. *NB v. District of Columbia*, 800 F.Supp.2d 51, 2011 U.S. Dist. LEXIS 86908 (2011), reversed by, remanded by 682 F.3d 77, 401 U.S. App. D.C. 184, 2012 U.S. App. LEXIS 11606 (2012).

Medicaid recipients failed to demonstrate they suffered real or immediate injury in fact as result of denial, termination, reduction, or delay in their prescription drug coverage, as re-

quired to establish Article III standing in action alleging defendants' failure to provide them with adequate and timely notice, opportunity for fair hearing, or opportunity for reinstated coverage pending hearing violated Fifth Amendment's Due Process Clause, Social Security Act (SSA), and District of Columbia law, since recipients were ultimately able to obtain their prescriptions at no cost in many instances, and neither inconvenience attributable to delay in receipt of prescriptions nor fear of potential allergic reaction to drug provided by substitute pharmacy rose to level necessary to constitute injury in fact. *NB v. District of Columbia*, 800 F.Supp.2d 51, 2011 U.S. Dist. LEXIS 86908 (2011), reversed by, remanded by 682 F.3d 77, 401 U.S. App. D.C. 184, 2012 U.S. App. LEXIS 11606 (2012).

District of Columbia, charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients, was authorized, if not compelled, to limit eligibility under public assistance statute's "General Public Assistance" category to a particular class of needy persons, namely, those unable to work because of a physical or mental disability expected to be of short duration. D.C. Code § 3-201 et seq. *Staley v. District of Columbia Dep't of Human Resources, Social Services Administration*, 310 A.2d 842, 1973 D.C. App. LEXIS 382 (1973).

Directive in statute that public assistance "shall be awarded to or on behalf of any needy individual" simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is entitled to public assistance. D.C. Code § 3-201 et seq. *Staley v. District of Columbia Dep't of Human Resources, Social Services Administration*, 310 A.2d 842, 1973 D.C. App. LEXIS 382 (1973).

Public assistance.

Mortgage assistance payments made to elderly or disabled homeowners were "public assistance" contemplated by statute authorizing mayor to file notice constituting and having effect of lien in case in which "public assistance" in form of old-age assistance or aid to disabled is granted. D.C. Code 1973, §§ 3-201, 3-217(b); D.C. Code 1981, §§ 3-201.1, 3-214.1(b). *Burt v. District of Columbia*, 525 A.2d 616, 1987 D.C. App. LEXIS 351 (1987).

Subchapter II. Establishment of Programs; Administration of Chapter.

§ 4-202.01. Public assistance categories established.

The following categories of public assistance are established:

- (1) Repealed.
- (2) General Assistance for Children;
- (3) Repealed.
- (4) Emergency Shelter Family Services;
- (5) Temporary Assistance for Needy Families;
- (6) Program on Work, Employment, and Responsibility; and
- (7) Interim Disability Assistance.

(Apr. 6, 1982, D.C. Law 4-101, § 201, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(b), 38 DCR 4205; Mar. 24, 1997, D.C. Law 12-60, § 701(b), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(b), 46 DCR 905; Apr. 3, 2001, D.C. Law 13-252, § 2(a), 48 DCR 673.)

Prior Codifications. — 1981 Ed., § 3-202.1.

Effect of amendments. — D.C. Law 13-252 added par. (7).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(b) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(b) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(b) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(a) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(b) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(b) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(b) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(b) of the Omnibus Budget Support Con-

gressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(b) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(b) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(b) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(b) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(b) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 701(b) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(b) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(b) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(b) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(b) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90-day) Welfare-to-Work Transition Plan, see §§ 4202 and 4203 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 4202 and 4203 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 12-7. — For legislative history of D.C. Law 12-7, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support

Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 13-252. — Law 13-252, the “Interim Disability Assistance Amendment Act of 2001”, was introduced in Council and assigned Bill No. 13-550, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-539 and transmitted to Both Houses of Congress for its review. D.C. Law 13-252 became effective on April 3, 2001.

Editor’s notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Section 4202 of D.C. Law 13-172 provided: “Definitions.

“(1) ‘Director’ means the Director of the District of Columbia Department of Human Services.

“(2) ‘TANF’ means Temporary Assistance to Needy Families.”

CASE NOTES

ANALYSIS

Eligibility for aid.
In general.

Eligibility for aid.

Directive in statute that public assistance “shall be awarded to or on behalf of any needy individual” simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is entitled to public assistance. D.C. Code § 3-201 et seq. *Staley v. District of Columbia Dep’t of Human Resources, Social Services Administration*, 310 A.2d 842, 1973 D.C. App. LEXIS 382 (1973).

Both need and deprivation must be shown when a child seeks to qualify for assistance

payments under District of Columbia’s AFDC program. D.C. Code § 3-202 et seq. *Trull v. District of Columbia Dep’t of Public Welfare*, 268 A.2d 859, 1970 D.C. App. LEXIS 337 (App. 1970).

Children of father, who was living at home and who was able-bodied and employable, were not qualified to receive assistance payments as “dependent” children under District of Columbia’s AFDC program, despite father’s failure and refusal to work and support family. D.C. Code § 3-202 et seq. *Trull v. District of Columbia Dep’t of Public Welfare*, 268 A.2d 859, 1970 D.C. App. LEXIS 337 (App. 1970).

In general.

This subchapter has no applicability to private day care centers. *Brown v. District of Columbia*, 122 WLR 641 (Super. Ct. 1994).

§ 4-202.01a. Termination of General Public Assistance.

Effective May 1, 1997, the General Public Assistance (“GPA”) program shall be terminated. No person shall be eligible to receive GPA benefits after May 1, 1997.

(Apr. 6, 1982, D.C. Law 4-101, § 201a, as added Mar. 20, 1998, D.C. Law 12-60, § 701(c), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 3-202.1a.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(c) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) addition of section, see § 701(c) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary addition of section, see § 2(c) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary addition of section, see § 701(c) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 701(c) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-202.02. Administrative duties of Mayor.

(a) In accordance with rules issued by the Mayor and approved by the Council, pursuant to § 4-202.05, the Mayor shall administer this chapter.

(b) The Mayor shall:

(1) Provide for maximum cooperation with other agencies rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) Cooperate in all necessary respects with agencies of the United States government in the administration of this chapter, and accept any funds, goods, or services payable to the District for public assistance and for administering public assistance; and

(3) Enter into reciprocal agreements with any state relative to the provision of public assistance to residents and nonresidents.

(Apr. 6, 1982, D.C. Law 4-101, § 202, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(c), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-202.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(c) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(c) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(c) of

the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Mayor's Orders. — District of Columbia Coordinating Committee on Early Intervention Services established: See Mayor's Order 88-183, August 3, 1988.

Mayor's Committee on Persons With Disabil-

ities established: See Mayor's Order 88-245, November 16, 1988.

Amendment of Mayor's Order 88-245, dated 11-16-88, Establishment — Mayor's Committee

on Persons with Disabilities and Reappointments and Appointments, see Mayor's Order 2002-79, May 3, 2002 (49 DCR 4149).

CASE NOTES

In general.

Paragraph (b)(1) of this section is nothing more than a statutory exhortation to the mayor, clearly subject to the council's discretion in setting benefit levels and to available funding; the U.S. Code contains virtually identical lan-

guage, and there is no federal requirement for up-to-date assessment of minimum needs. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 120 WLR 175 (Super Ct. 1992).

§ 4-202.03. Mayor authorized to delegate functions.

The Mayor may delegate and subdelegate any function vested in him or her by this chapter to any agency, officer, or employee of the District. The Mayor may contract with private entities to carry out functions under the TANF or POWER programs vested in him or her by this chapter, subject to the limitation of § 4-205.19h and any other applicable District law.

(Apr. 6, 1982, D.C. Law 4-101, § 203, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(d), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-202.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(d) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(d) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(d) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Delegation of Authority. — Amendment of Mayor's Order 86-26 dated February 6, 1986, Delegation of Authority under the Public Assistance Act of 1982, D.C. Law 4-101, see Mayor's Orders 93-31, March 23, 1993; 93-219, December 1, 1993.

Delegation of authority pursuant to Law 6-35, see Mayor's Order 86-40, March 13, 1986.

Delegation of authority pursuant to Law 6-124, see Mayor's Order 86-220, December 23, 1986.

Editor's notes. — Mayor's reports: Section 4 of Law 7-86 provided that within 180 days of March 11, 1988, the Mayor shall transmit to the Council a written report describing specific plans and timetables for implementing the provisions of this act. The Mayor shall transmit to the Council an annual updated written report regarding the status of the Emergency Shelter Family Program.

§ 4-202.04. Council to adopt rules. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 204, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(e), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-202.4.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(e) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law, 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(e) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(e) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(e) of the Self-Sufficiency Promotion

Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(e) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-202.05. Mayor to issue rules.

(a) The Mayor shall, no later than January 1, 1986, and pursuant to subchapter I of Chapter 5 of Title 2, issue rules necessary to implement § 2 of the District of Columbia Public Assistance Act of 1982 Amendments Act of 1985.

(b) The Mayor shall promptly issue proposed rules to implement the provisions of the Self-Sufficiency Promotion Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-241; 46 DCR 905), pursuant to subchapter I of Chapter 5 of Title 2. The proposed rules shall be submitted to the Council for a 30-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 30-day review period, the proposed rules shall be deemed approved.

(c)(1) Within 90 days of January 19, 2011, the Mayor shall issue proposed rules on sanctions.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Apr. 6, 1982, D.C. Law 4-101, § 205, as added Sept. 10, 1985, D.C. Law 6-35, § 2(a), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2(f), 46 DCR 905; Apr. 20, 1999, D.C. Law 12-264, § 15(a), 46 DCR 2118; Apr. 8, 2011, D.C. Law 18-370, § 522(a), 58 DCR 1008.)

Prior Codifications. — 1981 Ed., § 3-202.5.

Effect of amendments. — D.C. Law 18-370 added subsec. (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(c) of Public Assistance Temporary

Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(f) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 4(a) of TANF-Related Medicaid Managed Care Program Technical Clarification Temporary Amendment Act of 1999 (D.C. Law

12-277, April 27, 1999, law notification 46 DCR 4283).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(c) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(c) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(f) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(f) of the Self-Sufficiency Promotion Legislation Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(f) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(f) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary amendment of section, see § 4(a) of the TANF-related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287).

For temporary (90 day) amendment of section, see § 522(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 6-35. — Law 6-35, the “District of Columbia Public Assistance Act of 1982 Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-97, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 28, 1985, and June 11, 1985, respectively. Signed by the Mayor on June 14, 1985, it was assigned Act No. 6-50 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010,” was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Short title. — Short title: Section 521 of D.C. Law 18-370 provided that subtitle C of title V of the act may be cited as “District of Columbia Public Assistance Amendment Act of 2010”.

References in text. — “Section 2 of the District of Columbia Public Assistance Act of 1982 Amendments Act of 1985,” referred to at the end of the subsec. (a), is § 2 of D.C. Law 6-35, which enacted this section and § 4-211.06, and amended §§ 4-205.05, 4-205.10, 4-205.11, 4-205.15, 4-205.25, 4-205.33, 4-205.50, 4-205.54, 4-205.55, 4-205.57, 4-205.59, 4-208.01, 4-210.09, 4-216.01 and 4-217.05, and repealed § 4-205.60.

Delegation of Authority. — Delegation of Rulemaking Authority to the Director of the Department of Human Services, see Mayor’s Order 2011-118, July 14, 2011 (58 DCR 6111).

Resolutions. — Resolution 16-94, the “Incentive Payments for Eligible TANF Recipients Rulemaking Approval Resolution of 2005”, was approved effective January 4, 2005.

Resolution 16-337, the “Work Participation Allowance and Incentive Payments to Eligible TANF Recipients Proposed Rulemaking Approval Resolution of 2005”, was approved effective September 22, 2005.

Subchapter III. Crisis Management of Children.

§ 4-203.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Child” means any child who comes within the purview of the Department of Human Services either because such child is neglected as defined in

§ 16-2301(9) or whose custody has been voluntarily surrendered by the parent or guardian to the Mayor.

(2) "Crisis facility" shall mean any community-based residential type housing for dependent and neglected children.

(3) "Private institution" means any privately owned or operated institution that provides care and maintenance for neglected or dependent children, or both, on a contractual basis with the Mayor.

(4) "Public institution" shall mean Junior Village or any successor institution designed and used for such purpose.

(Apr. 6, 1982, D.C. Law 4-101, § 301, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-159, § 17(a), 32 DCR 30.)

Prior Codifications. — 1981 Ed., § 3-203.1.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-159. — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council

and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 4-203.02. Assignment to public institution by Department.

No child 6 years of age or younger shall be assigned by the Department to any public institution, except that any such child who requires medical treatment may be assigned to a hospital or other medical facility for such treatment; provided, that medical treatment shall not be construed to include emotional disorders of less than an acute nature. In furtherance thereof, the Mayor shall develop an overall plan of child care and emergency child care so as to eliminate the necessity of a public institution for the care of such children other than for medical reasons. No child shall remain in any crisis facility for longer than 15 days.

(Apr. 6, 1982, D.C. Law 4-101, § 302, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-203.2.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-203.03. Maintenance in public institution by Mayor.

No child 6 years of age or younger shall be maintained by the Mayor in any public institution except for medical treatment.

(Apr. 6, 1982, D.C. Law 4-101, § 303, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-203.3.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-203.04. Assignment to public institution by Mayor.

The Mayor shall not assign any child regardless of age to any public institution except that any such child who requires medical treatment may be assigned to a hospital or other medical facility for such treatment or unless ordered to such rehabilitative institution as a court of competent jurisdiction may direct.

(Apr. 6, 1982, D.C. Law 4-101, § 304, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-203.4. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

Subchapter IV. Medicaid Program Administration.

PART A.

GENERAL.

§ 4-204.01. Monthly amount of income disregarded. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 401, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(d), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-204.1.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of §§ 4-204.01 through 4-204.04, see § 2(g) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(g) of the Self-Sufficiency Promotion Legislative Review

Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-204.02. Amount of federal payment disregarded. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 402, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-204.2.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see

§ 2(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-204.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-204.03. Ability of responsible relatives to contribute. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 403, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-204.3.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-204.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-204.04. Amount of training incentive payment disregarded. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 404, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-204.4.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-204.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-204.05. Medicaid benefits.

The District state plan required under title XIX of the Social Security Amendments of 1965 (42 U.S.C. § 1396 et seq.) shall provide that all persons in the following categories are eligible for full Medicaid benefits:

- (1) All persons receiving Supplemental Security Income benefits;
- (2) All persons categorically related to the Supplemental Security Income ("SSI") program (that is, aged, blind, or persons with permanent disabilities) and receiving benefits under the Old Age and Survivors Disability Insurance ("OASDI") program and who were eligible for SSI benefits (but for OASDI cost-of-living increases received since April, 1977; and
- (3) All persons categorically related to the SSI program (that is, aged, blind, or persons with permanent disabilities) whose monthly countable income, regardless of source, is equal to or less than the combined maximum monthly payment of SSI plus the District supplement for the person having no other income or resources.

(Apr. 6, 1982, D.C. Law 4-101, § 405, 29 DCR 1060; Apr. 24, 2007, D.C. Law 16-305, § 13(a), 53 DCR 6198.)

Cross references. — Medical assistance program, see § 1-30

Prior Codifications. — 1981 Ed., § 3-204.5.

Effect of amendments. — D.C. Law 16-305 substituted “persons with permanent disabilities” for “permanently disabled”, throughout the section.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 4-110.

§ 4-204.05a. Extension of transitional Medicaid program.

(a) The Mayor shall extend the transitional Medicaid program to 24 months pursuant to the Family Support Act of 1988, approved October 13, 1988 (P.L. 100-485; 102 Stat. 2343), and the District of Columbia State Plan for Medicaid. The Mayor shall seek any waivers and exemptions from federal statutes and regulations necessary to make such an extension.

(b) Increased transitional medical assistance benefits shall be made available to all working families eligible under subsection (a) of this section.

(c) Earned income shall be disregarded under the extended Transitional Medicaid Program in accordance with § 4-205.11(a)(5)(B) [(a)(5) repealed].

(Apr. 6, 1982, D.C. Law 4-101, § 405a, as added Oct. 27, 1995, D.C. Law 11-72, § 301, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(a), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-204.5a.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(c) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 4(a) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(a) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(a) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(a) of

the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — Section 401 of D.C. Law 11-72 provided that the act shall expire 5 years from the date of implementation of an approved federal waiver and rules promulgated by the Mayor.

§ 4-204.06. District supplement for Supplemental Security Income recipients. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 406, as added Sept. 14, 1982, D.C. Law 4-146, § 3, 29 DCR 3151; Mar. 10, 1983, D.C. Law 4-208, § 2(a), 30 DCR 202; Mar. 14, 1985, D.C. Law 5-159, § 17(b), 32 DCR 30; Apr. 30, 1988, D.C. Law 7-104, § 29, 35 DCR 147; Feb. 27, 1998, D.C. Law 12-53, § 2, 44 DCR 6228.)

Prior Codifications. — 1981 Ed., § 3-204.6.

Legislative history of Law 12-53. — Law 12-53, the “Supplemental Security Income Payment Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-254, which was referred to the Committee on Human Ser-

vices. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-170 and transmitted to both Houses of Congress for its review. D.C. Law 12-53 became effective on February 27, 1998.

§ 4-204.07. Interim Disability Assistance.

(a) The purpose of the Interim Disability Assistance (“IDA”) program is to provide temporary financial assistance to adults with disabilities while their application for Supplemental Security Income (“SSI”) is pending. The eligibility criteria are designed to qualify individuals who have a high likelihood of receiving SSI.

(b) Applications for IDA shall be approved or disapproved by the Mayor with reasonable promptness. Other aspects of the application process, including good-cause exceptions to the application-processing standard, shall be determined by rules established by the Mayor. The monthly grant amount shall be the same as that for a family size of one for an individual or 2 for a couple under the Temporary Assistance to Needy Families program, as determined under § 4-205.52.

(c) For the purposes of IDA, the term “disability” shall have the same meaning as that employed by the Social Security Administration (“SSA”);

(d)(1) An individual shall be eligible for IDA if the individual is:

(A) A United States citizen or an alien who meets the alien eligibility requirements for SSI under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2260; 8 U.S.C. §§ 1601-1646);

(B) A resident of the District of Columbia, as determined under § 4-205.03;

(C) Financially in need, as determined under the rules established by the Mayor;

(D) Ineligible for a category of cash assistance in which there is federal financial participation, except that an individual who has applied for Social Security Disability Insurance (“SSDI”) or Supplemental Security Income may be eligible during the period that the SSDI or SSI application is being processed; and

(E) Determined by the Department of Human Services (“DHS”) to meet the definition of disability.

(2) An otherwise eligible individual may not receive assistance unless the individual:

(A) Applies to the Social Security Administration for SSI benefits;

(B) Signs an Interim Assistance Reimbursement Authorization form in accordance with subsection (e)(2) of this section;

(C) Provides a social security number or verification of application for a social security number; and

(D) As a condition of eligibility, an applicant for or recipient of IDA shall cooperate with an entity designated by the Mayor to provide case management and legal advocacy in the SSI application and appeal process.

(3)(A) An otherwise qualified individual's period of eligibility for IDA benefits shall begin in the month following the month in which his or her application for SSI was filed with the Social Security Administration.

(B) The period of eligibility for IDA benefits shall end either at the end of the month in which the Social Security Administration makes a final decision on the application for SSI benefits, if the Social Security Administration's decision is a denial of the application, or at the end of the month in which the Social Security Administration begins payment of benefits, if the decision is favorable.

(C) For purposes of this paragraph, the final decision of the Social Security Administration shall be the decision by the Appeals Council of the Office of Hearings and Appeals, or the denial by the Disability Determination Division or Administrative Law Judge, if the IDA recipient fails, without good cause, to file a timely appeal from that decision.

(D) If the decision of the Administrative Law Judge is a denial and an appeal is filed timely, the Department of Human Services shall immediately make a determination whether to refer the IDA recipient for appropriate vocational rehabilitation services.

(E) If an IDA recipient requests a fair hearing to contest the termination of his or her benefits, any IDA benefits paid pending the outcome of the fair hearing shall terminate as of the last month of the period of eligibility, as defined in this section, regardless of whether the fair hearing process is complete.

(4) If an applicant for IDA has previously been determined by the Social Security Administration ("SSA") not to satisfy the disability requirements for SSI, DHS will evaluate disability in the same manner as under the Medicaid program, as provided in 42 C.F.R. § 435.541. The applicant shall be ineligible for IDA unless he or she:

(A) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination;

(B) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security Act, and has not applied to SSA for a determination with respect to these allegations; or

(C) Alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security Act, and has applied to SSA for reconsideration or reopening of its disability decision.

(e)(1) For any month or period of months in which an IDA recipient receives both IDA and SSI, the IDA recipient shall repay to the District of Columbia:

(A) The entire amount of the IDA assistance payments received if the SSI benefits received for the same period equaled or exceeded the IDA payment; or

(B) That portion of the IDA assistance payments equal in amount to the SSI benefits received for the same period if the SSI benefits received were less than the IDA payment.

(2) To make repayment in accordance with paragraph (1) of this subsection, an IDA applicant shall sign an Interim Assistance Reimbursement Authorization which:

(A) Permits the Social Security Administration to send the individual's past-due SSI benefit payment to the DHS; and

(B) Permits DHS to deduct from these payments an amount equal to the IDA benefits provided.

(3) Upon receipt of an IDA recipient's past-due SSI benefit, DHS shall calculate, in accordance with paragraph (1) of this subsection, the amount of the benefit due to DHS as repayment and the amount, if any, due the IDA recipient. DHS shall then provide the IDA recipient with a written explanation of this calculation and shall pay any amount due the IDA recipient, in accordance with section 1631 of the Social Security Act, approved October 30, 1972 (86 Stat. 1475; 42 U.S.C. § 1383(g)) and SSA Interim Assistance regulations, 20 C.F.R. §§ 416.1901 to 416.1922.

(4) Because having a pending SSI application is an eligibility requirement for IDA, if an IDA recipient is determined by the Social Security Administration to meet the disability requirements for purposes of SSI eligibility but withdraws the SSI application prior to payment of past-due SSI benefits, the IDA benefits received by that individual shall be considered an overpayment and that individual shall be liable to the District for repayment of all IDA benefits received.

(e-1)(1) The amount of a recipient's past-due SSI benefit payment that is due DHS as repayment under subsection (e) of this section shall be deposited into the Interim Disability Assistance Fund established by § 4-204.09.

(2) The amount of an overpayment of IDA benefits that is received from an IDA recipient pursuant to subsection (e)(4) of this section shall be deposited into the Interim Disability Assistance Fund established by § 4-204.09.

(f) The Mayor shall submit to the Council by March 15 of each year a report on the operation of the program for the previous calendar year. The report shall include:

(1) The total number of IDA applicants, the number approved, and the number denied;

(2) The number and percentage of IDA applicants approved for SSI. To the extent possible, the information should be provided for each of the four levels of adjudication (original application, reconsidered application, Administrative Law Judge decision, and Appeals Council of the Office of Hearings and Appeals;

(3) An analysis of the approvals and denials at each level, why the approval percentage is what it is, and what needs to be done to ensure a better match between SSI approvals and DHS approvals; and

(4) Observations on the best practices in other states.

(g) The payment of benefits under this section shall be subject to the availability of appropriations.

(h) The Department of Human Services shall establish eligibility criteria for participants in the Interim Disability Assistance program.

(Apr. 6, 1982, D.C. Law 4-101, § 407, as added Apr. 3, 2001, D.C. Law 13-252,

§ 2(b), 48 DCR 673; Oct. 1, 2002, D.C. Law 14-190, § 1902(a), 49 DCR 6968; May 18, 2004, D.C. Law 15-156, § 2, 51 DCR 3393; Sept. 14, 2011, D.C. Law 19-21, § 5092, 58 DCR 6226.)

Effect of amendments. — D.C. Law 14-190 added subsec. (e-1).

D.C. Law 15-156 rewrote subsec. (b); and in subsec. (d), substituted “established by the Mayor” for “applicable to the TANF program” in subpar. (1)(C), made nonsubstantive changes to subpars. (2)(B) and (2)(C), and added subpar. (2)(D). Prior to amendment, subsec. (b) had read as follows: “(b) The application and financial eligibility processes shall be administered in accordance with the rules for the Temporary Assistance to Needy Families (“TANF”) program. The monthly grant amount shall be the same as that for a family size of one under the TANF program, as determined under § 4-205.52.”

D.C. Law 19-21 added subsec. (h).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Interim Disability Assistance Temporary Amendment Act of 2002 (D.C. Law 14-141, 200, law notification 49 DCR 5058).

For temporary (225 day) amendment of section, see § 2 of Interim Disability Assistance Temporary Amendment Act of 2003 (D.C. Law 15-1, May 3, 2003, law notification 50 DCR 3781).

For temporary (225 day) amendment of section, see § 2 of Interim Disability Assistance Temporary Amendment Act of 2004 (D.C. Law 15-116, March 30, 2004, law notification 51 DCR 3803).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Interim Disability Assistance Emergency Amendment Act of 2002 (D.C. Act 14-285, February 25, 2002, 49 DCR 2315).

For temporary (90 day) amendment of section, see § 1902(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 2 of Interim Disability Assistance Emergency Amendment Act of 2003 (D.C. Act 15-2, January 22, 2003, 50 DCR 1424).

For temporary (90 day) amendment of section, see § 2 of Interim Disability Assistance Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-48, March 24, 2003, 50 DCR 2820).

For temporary (90 day) amendment of section, see § 2 of Interim Disability Assistance Second Emergency Amendment Act of 2003 (D.C. Act 15-278, December 18, 2003, 51 DCR 58).

For temporary (90 day) amendment of section, see § 2 of Interim Disability Assistance

Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-402, March 18, 2004, 51 DCR 3643).

Legislative history of Law 13-252. — For D.C. Law 13-252, see notes following § 4-202.01.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 15-156. — Law 15-156, the “Interim Disability Assistance Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-608, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on February 3, 2004, and March 2, 2004, respectively. Signed by the Mayor on March 18, 2004, it was assigned Act No. 15-391 and transmitted to both Houses of Congress for its review. D.C. Law 15-156 became effective on May 18, 2004.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title of title XIX of Law 14-190: Section 1901 of D.C. Law 14-190 provided that title XIX of the act may be cited as the Interim Disability Assistance Fund Establishment Amendment Act of 2002.

Short title: Section 5091 of D.C. Law 19-21 provided that subtitle J of title V of the act may be cited as “Interim Disability Assistance Amendment Act of 2011”.

Editor’s notes. — Sections 3 and 4 of D.C. Law 13-252 provided:

“Sec. 3. The Interim Disability Assistance Amendment Act of 2000 shall be applicable beginning October 1, 2001, unless funds are made available by reprogramming for implementation during the fourth quarter of fiscal year 2001.

"Sec. 4. The Mayor shall provide the Council, no later than November 15, 2001, a report on how to implement a computer system that, at a minimum, would enable the District's Interim Disability Assistance program to interface and directly exchange information with the computer systems of the federal Social Security

Disability Insurance and Supplemental Security Income programs. The report shall include a description of at least one proposed computer system, its capabilities and limitations, preliminary cost estimates to obtain the system, and timetables for acquisition and implementation."

§ 4-204.08. Pilot program for Interim Disability Assistance.

(a) The Mayor shall establish a pilot program for providing Interim Disability Assistance, beginning no later than February 1, 2002. Eligibility for assistance under the program shall be based on a minimum appropriation of no less than \$2,150,000, and assistance shall continue to be provided if additional funds in excess of the \$2,150,000 become available. During any period in which eligibility for assistance is capped due to the unavailability of funds, the Mayor shall establish and maintain a waiting list of likely eligible applicants.

(b) The Department of Human Services, Income Maintenance Administration ("IMA") shall conduct a study to determine the size of the eligible population for assistance. The report shall be completed in time for the IMA to recommend to the Mayor the appropriate funding level for the program in Fiscal Year 2003.

(c) Based on an analysis of the available data, including the size of the eligible population determined pursuant to subsection (b) of this section, the IMA shall recommend to the Mayor the appropriate funding level to fully fund the Interim Disability Assistance program for Fiscal Year 2003.

(d) The Mayor shall fully fund the Interim Disability Assistance program for Fiscal Year 2003 by including a line item for that purpose in the Fiscal Year 2003 base budget and operational plan.

(Apr. 6, 1982, D.C. Law 4-101, § 408, as added Oct. 3, 2001, D.C. Law 14-28, § 5002, 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 29, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition of section, see § 4502 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) addition of §§ 4-204.11 to 4-204.16, see §§ 1501 to 1506 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) addition of §§ 4-204.51 to 4-204.56, see §§ 1551 to 1556 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) addition of § 4-204.09, see § 1902(b) of Fiscal Year 2003 Bud-

get Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively.

Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C.

Law 15-105 became effective on March 13, 2004.

§ 4-204.09. Interim Disability Assistance Fund.

(a) There is established as a nonlapsing, revolving fund the Interim Disability Assistance Fund ("Fund") which shall be separate from the General Fund and into which shall be deposited funds to be used solely for the purpose of implementing the Interim Disability Assistance program established by § 4-204.07.

(b) All funds shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All funds deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available for the purpose of funding the Interim Disability Act program, subject to authorization by Congress in an appropriations act.

(Apr. 6, 1982, D.C. Law 4-101, § 409, as added Oct. 1, 2002, D.C. Law 14-190, § 1902(b), 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.07.

PART B.

OFFICE OF MEDICAID OPERATIONS REFORM.

§ 4-204.11. Short title.

This part may be cited as the "Office of Medicaid Operations Reform Establishment Act of 2002".

(Oct. 1, 2002, D.C. Law 14-190, § 1501, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1502(a), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39 deleted "Public Provider" following "Medicaid".

Emergency legislation. — For temporary (90 day) approval of proposed amendments to the District of Columbia State Plan for Medical Assistance, see § 1902 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For the temporary (90 day) Medicaid State Plan Amendment Approval provisions, see § 1902 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1502(a) of Fiscal Year 2004 Budget

Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1502(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For the temporary (90 day) Medicaid State Plan Amendment Approval provisions, see § 1902 of the Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Short title. — Short title of title XV of Law 15-39: Section 1501 of D.C. Law 15-39 provided that title XV of the act may be cited as the

Medicaid and Tobacco Funding Amendment Act of 2003.

Editor’s notes. — Section 1902 of D.C. Law 14-307 provided: “Pursuant to section 1(a)(2) of An Act To enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02(a)(2)), the Council of the District of Columbia approves the proposed amendments to the District of Columbia State Plan for Medical Assistance to authorize the Medicaid Program to remove the requirement that requires that rates paid to hospitals, nursing facilities, and intermediate care facilities for persons with mental retardation be adjusted annually for inflation; to add provisions that require that payments made to hospitals, nursing facilities, and intermediate care facilities for persons with mental retardation for inflation adjustments in subsequent fiscal years be contingent upon the availability of funds; to increase the pharmacy dispensing fee effective April 1, 2003; and to remove provisions authorizing payment exceptions to the cost ceilings applicable to nursing facilities; and to approve a waiver to the District of Columbia State Plan for Medical Assistance to expand coverage of its Medicaid Program to childless adults 50 to 64 years of age.” Establishment of the Office of Medicaid Public Provider Operations Reform, see Mayor’s Order 2002-101, June 28, 2002 (49 DCR 5997).

§ 4-204.12. Definitions.

For the purposes of this part, the term:

(1) “Director” means the Director of the Office of Medicaid Operations Reform.

(1A) “Foster Care and Adoption Assistance” means the programs authorized by Part E of Title IV of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 et seq.).

(2) “Medicaid” means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or by § 1-307.02, and administered by the Department of Health.

(2A) “Medicare” means the health insurance programs authorized by Title XVIII of the Social Security Act, approved July 30, 1965 (79 Stat. 290; 42 U.S.C. § 1395 et seq.).

(3) “Office” means the Office of Medicaid Operations Reform.

(Oct. 1, 2002, D.C. Law 14-190, § 1502, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1502(b), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39, in pars. (1) and (3), deleted “Public Provider” following “Medicaid”; added pars. (1A) and (2A); and in par. (2), substituted “or by” for “and by”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1502(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1502(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.11.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

§ 4-204.13. Establishment of the Office of Medicaid Operations Reform.

(a) There is established an Office of Medicaid Operations Reform.

(b) The Mayor shall appoint a Director of the Office who shall be responsible for the management and operations of the Office and serve at the pleasure of the Mayor.

(c) The Mayor shall establish an External Medicaid Task Force to advise the Director.

(d) The Mayor shall fix the compensation of the Director pursuant to subchapter IX of Chapter 6 of Title 1.

(e) The Director is authorized to hire staff in the Career Service, consistent with budgetary authorization, as he or she deems necessary to perform the functions of the Office. The Director may engage qualified volunteers in accordance with District of Columbia law.

(f) If spending pressures generated by the Medicaid, Medicare, and Foster Care and Adoption Assistance programs make it necessary that funds from the Medicaid and Special Education Reform Fund be made available for expenditure by the Department of Human Services, the Child and Family Services Agency, the Department of Mental Health, or the Department of Health, the Director, in accordance with § 4-204.55(a)(2)(A), shall submit to the Mayor either a plan to generate savings comparable to the funds allocated or a performance plan to ensure future reduction of costs and maximization of third-party revenues.

(g) The Director shall have the authority to delegate to other employees of the Office any of the Director’s powers and duties.

(Oct. 1, 2002, D.C. Law 14-190, § 1503, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1502(c), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39, in subsec. (a), deleted “Public Provider” following “Medicaid”; rewrote subsec. (f) which had read as follows: “(f) If spending pressures generated by the Medicaid program make it necessary that funds from the Tobacco Settlement Trust Fund be made available for expenditure by the Department of Human Services or the Child and Family Services Agency, the Director shall submit to the Mayor a plan to generate savings comparable to the funds allocated in accordance with § 7-1811.03(b)(5)(A)(i).”

Emergency legislation. — For temporary

(90 day) amendment of section, see § 1502(c) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1502(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.11.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

§ 4-204.14. Purposes, powers, and duties of the Office.

The primary purpose of the Office is to redesign the District of Columbia's Medicaid, Medicare, and Foster Care and Adoption Assistance infrastructure to improve the operational management of Medicaid, Medicare, and Foster Care and Adoption Assistance programs on an agency level. The Office shall:

(1) Provide technical assistance and support to District of Columbia agencies for the purpose of documenting and processing Medicaid, Medicare, and Foster Care and Adoption Assistance claims, and maximizing Medicaid, Medicare, and Foster Care and Adoption Assistance reimbursements, where not duplicative of assistance already provided to District of Columbia agencies by the State Medicaid Office;

(2) Manage Medicaid, Medicare, and Foster Care and Adoption Assistance costs and project revenues in liaison with the State Medicaid, Medicare, and Foster Care and Adoption Assistance Office and the Chief Financial Officer;

(3) Review and support legislation ensuring service expansion for all entitled residents in collaboration with the Mayor and the State Medicaid Office;

(4) Oversee the implementation of Medicaid, Medicare, and Foster Care and Adoption Assistance reforms within District of Columbia agencies to fulfill statutory requirements;

(5) Prepare an annual report for the Mayor and the Council on the Office's activities and recommendations; and

(6) Engage in other activities as needed to carry out the purposes of this part.

(Oct. 1, 2002, D.C. Law 14-190, § 1504, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1502(d), 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, § 30(a), 51 DCR 881.)

Effect of amendments. — D.C. Law 15-39, in the introductory paragraph, substituted “Medicaid, Medicare, and Foster Care and Adoption Assistance infrastructure” for “Medicaid infrastructure” and substituted “Medicaid, Medicare, and Foster Care and Adoption Assistance Programs” for “Medicaid programs”; in par. (1), substituted “Medicaid, Medicare, and Foster Care and Adoption Assistance claims, and maximizing Medicaid, Medicare, and Foster Care and Adoption Assistance reimbursements,” for “Medicaid claims, and maximizing Medicaid reimbursements,”; and in pars. (2) and (4), substituted “Medicaid, Medicare, and Foster Care and Adoption Assistance” for “Medicaid”.

D.C. Law 15-105, in par. (6), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1502(d) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1502(d) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.11.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

§ 4-204.15. Rules.

The Mayor, pursuant to Chapter 5 of Title 2, may issue rules to implement the provisions of this part.

(Oct. 1, 2002, D.C. Law 14-190, § 1505, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.11.

§ 4-204.16. Applicability.

This part shall apply as of October 1, 2002.

(Oct. 1, 2002, D.C. Law 14-190, § 1506, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 30(b), 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.11.

PART C.

MEDICAID AND SPECIAL EDUCATION REFORM FUND.

§ 4-204.51. Short title.

This part may be cited as the “Medicaid and Special Education Reform Fund Establishment Act of 2002”.

(Oct. 1, 2002, D.C. Law 14-190, § 1551, 49 DCR 6968.)

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by

the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Editor’s notes. — Section 1506 of D.C. Law 14-190 provided that this part shall apply as of October 1, 2002.

§ 4-204.52. Definitions.

For the purposes of this part, the term:

(1) “District” shall mean the District of Columbia.

(1A) “Foster care and adoption assistance” means the programs authorized by Part E of Title IV of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 et seq.).

(2) “Fund” shall mean the Medicaid and Special Education Reform Fund established by § 4-204.53

(3) “Medicaid” means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or by § 1-307.02, and administered by the Department of Health.

(4) “Medicare” means the health insurance programs authorized by title XVIII of the Social Security Act, approved July 30, 1965 (79 Stat. 290; 42 U.S.C. § 1395 et seq.).

(5) “Special Education” means services provided under § 38-2501 to students who are classified as having a disability, as defined in section 101(a)(1) of the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1401(a)(1)), or in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C.S. § 706(8)).

(Oct. 1, 2002, D.C. Law 14-190, § 1552, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1503(a), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39, added pars. (1A), (4), and (5); and in par. (3), substituted “or by” for “and by”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1503(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of sec-

tion, see § 1503(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.51.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

§ 4-204.53. Establishment of the Medicaid and Special Education Reform Fund.

(a) There is established as a nonlapsing, revolving fund the Medicaid and Special Education Reform Fund into which shall be deposited funds made available for the purposes of Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education reform described in § 4-204.54. The Fund shall be administered by the Chief Financial Officer.

(b) All amounts deposited in the Fund shall be appropriated without fiscal year limitation pursuant to an act of Congress. All amounts deposited in the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available for the purposes of Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education reform described in § 4-204.54, subject to authorization by Congress in an appropriations act.

(Oct. 1, 2002, D.C. Law 14-190, § 1553, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1503(b), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39, in subsecs. (a) and (b), substituted “Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education reform” for “Medicaid and Special Education reform”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1503(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1503(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.51.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

§ 4-204.54. Purposes of the Fund.

The Fund shall be used for the following purposes:

(1) Ensuring adequate resources are available to support District-wide Medicaid costs and revenue shortfalls;

(1A) Ensuring adequate resources are available to support District-wide Medicare costs and revenue shortfalls;

(1B) Ensuring adequate resources are available to support District-wide Foster Care and Adoption Assistance costs and revenue shortfalls;

(2) Ensuring adequate resources are available to support District-wide Special Education costs and revenue shortfalls;

(3) Supporting Medicaid, Medicare, and Foster Care and Adoption Assistance reform activities designed to establish cost-effective, agency-based Medicaid, Medicare, and Foster Care and Adoption Assistance operations; and

(4) Optimizing Medicaid, Medicare, Foster Care and Adoption Assistance and other third-party revenues.

(Oct. 1, 2002, D.C. Law 14-190, § 1554, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1503(c), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39, in the introductory language, substituted “The Fund shall be used for the following purposes:” for “The purposes of the Fund shall include:”; added pars. (1A) and (1B); in par. (3), substituted “Medicaid, Medicare, and Foster Care and Adoption Assistance” for “Medicaid” in two places; and in par. (4), substituted “Medicaid, Medicare, Foster Care and Adoption Assistance” for “Medicaid”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1503(c) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of sec-

tion, see § 1503(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) addition of section, see § 5142 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 5142 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.51.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

§ 4-204.55. Distribution of funds.

(a) The Chief Financial Officer shall distribute funds from the Fund only after:

(1) Certifying that the funds are needed by the District of Columbia Public Schools, the Child and Family Services Agency, the Department of Human Services, the Department of Mental Health, or the Department of Health for the purposes described in § 4-204.54;

(2)(A) Certifying either that:

(i) A savings plan to be submitted by the Director of the Office of Medicaid Operations Reform to the Mayor will generate savings for the Child and Family Services Agency, the Department of Human Services, the Department of Mental Health, or the Department of Health, respectively, comparable to the funds to be allocated to the agency during Fiscal Year 2003 or Fiscal Year 2004; or

(ii) If a savings plan that will generate savings comparable to the funds allocated is not possible, a performance plan to be submitted by the Director of the Office of Medicaid Operations Reform to the Mayor will ensure

that the agency to which the requested funds are to be allocated will implement policies and procedures and develop the infrastructure necessary to enable the agency to reduce costs and maximize third-party revenues by no later than October 1, 2004; or

(B) Certifying that a savings plan to be submitted by the District of Columbia Public Schools will generate savings comparable to the funds allocated to the agency during Fiscal Year 2003 or Fiscal Year 2004; and

(3) Providing notification of the distribution to the Mayor and Council.

(a-1) A savings plan required under subsection (a)(2)(A)(i) of this section that pertains to the allocation of funds to an agency in Fiscal Year 2003 shall be submitted no later than December 31, 2002. The plan shall commence no later than October 1, 2003, and shall generate savings comparable to the funds allocated to the agency from the Fund in Fiscal Year 2003.

(a-2) A savings plan required under subsection (a)(2)(A)(i) of this section that pertains to the allocation of funds to an agency in Fiscal Year 2004 shall be submitted no later than December 31, 2003. The plan shall commence no later than October 1, 2004, and shall generate savings comparable to the funds allocated to the agency from the Fund in Fiscal Year 2004.

(a-3) A performance plan required under subsection (a)(2)(A)(ii) of this section shall be submitted no later than December 31, 2003, and shall commence no later than October 1, 2004.

(a-4) The savings plan required under subsection (a)(2)(B) of this section that pertains to the allocation of funds to the District of Columbia Public Schools in Fiscal Year 2003 shall be submitted, no later than December 31, 2002, by the District of Columbia Public Schools to the Special Education Task Force established by Chapter 25A of Title 38. The plan shall commence no later than October 1, 2003, and generate savings comparable to the funds allocated to the agency from the Fund in Fiscal Year 2003.

(a-5) The savings plan required under subsection (a)(2)(B) of this section that pertains to the allocation of funds to the District of Columbia Public Schools in Fiscal Year 2004 shall be submitted, no later than December 31, 2003, by the District of Columbia Public Schools to the Special Education Task Force established by Chapter 25A of Title 38. The plan shall commence no later than October 1, 2004, and generate savings comparable to the funds allocated to the agency from the Fund in Fiscal Year 2004.

(a-6) Beginning 3 months following the commencement of any plan submitted pursuant to subsection (a)(2) of this section, or no later than January 2, 2004, the Mayor and the Special Education Task Force shall provide the Council with quarterly reports on the progress made by the Department of Human Services, the Child and Family Services Agency, the Department of Mental Health, the Department of Health, and the District of Columbia Public Schools, in reducing costs associated with the Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education programs.

(b) Total distribution of funds from the Fund to the District of Columbia Public Schools, the Child and Family Services Agency, the Department of Human Services, the Department of Mental Health, or the Department of Health in any given fiscal year shall not exceed the amount appropriated for that agency in that fiscal year for the purposes of § 7-1811.03(b).

(Oct. 1, 2002, D.C. Law 14-190, § 1555, 49 DCR 6968; Nov. 13, 2003, D.C. Law 15-39, § 1503(d), 50 DCR 5668; Apr. 13, 2005, D.C. Law 15-354, §§ 12, 84(g), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-39, in subsec. (a), substituted “the Department of Human Services, the Department of Mental Health, or the Department of Health” for “or the Department of Human Services” in par. (1), and rewrote par. (2); added subsecs. (a-1), (a-2), (a-3), (a-4), (a-5), and (a-6); and in subsec. (b), substituted “the Department of Human Services, the Department of Mental Health, or the Department of Health” for “or the Department of Human Services”. Prior to amendment, par. (2) of subsec. (a) had read as follows: “(2) Certifying that a savings plan to be submitted by the Director of the Office of Medicaid Public Provider Operations Reform to the Mayor in accordance with § 7-1811.03(b)(5)(A)(i), will generate savings comparable to the funds allocated; and”

D.C. Law 15-354, in subsecs. (a-4) and (a-5), validated previously made technical corrections.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1503(d) of

Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1503(d) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.51.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

§ 4-204.56. Annual report.

The Mayor shall report annually to the Council on the revenues and activities of the Fund.

(Oct. 1, 2002, D.C. Law 14-190, § 1556, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.51.

PART D.

NURSING FACILITIES MEDICAID REIMBURSEMENT.

§ 4-204.61. Definitions.

For the purposes of this part, the term:

(1) “Case mix reimbursement methodology” means a prospective Medicaid payment rate system for nursing facilities that includes:

(A) A point-of-sale prescription system;

(B) A resident classification system based on resident acuity and needs; and

(C) The following 3 peer groupings for rate purposes:

(i) All freestanding nursing facilities, except those owned by the District of Columbia;

(ii) All hospital-based nursing facilities; and

(iii) All nursing facilities owned by the District of Columbia.

(2) “Medicaid” means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), and by § 1-307.02, and administered by the Department of Health.

(3) “Nursing facility” means a health care facility as defined in § 44-501(a)(3), but does not include a health care facility operated by the federal government.

(Dec. 7, 2004, D.C. Law 15-205, § 5211, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 19, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in par. (3), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition, see § 5211 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5211 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 4-204.62. Medicaid reimbursement system for nursing facilities.

(a) The Department of Health shall develop and implement a case mix reimbursement methodology for nursing facilities. The case mix reimbursement methodology shall be effective no earlier than April 1, 2005.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement this section.

(Dec. 7, 2004, D.C. Law 15-205, § 5212, 51 DCR 8441.)

Cross references. — Child support enforcement, “dependent child” and “public assistance” defined, see § 46-201.

Emergency legislation. — For temporary (90 day) addition, see § 5212 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 5212 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 4-204.61.

Subchapter V. Public Assistance Programs.

§ 4-205.01. Eligibility for public assistance.

Public assistance may be awarded to, or on behalf of, any needy individual

who is eligible for one of the categories of public assistance established by subchapter II.

(Apr. 6, 1982, D.C. Law 4-101, § 501, 29 DCR 1060; Oct. 27, 1995, D.C. Law 11-72, § 201(a), 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 2(h), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(d) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(d) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(d) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(h) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(h) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(h) of

the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(h) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — Section 401 of D.C. Law 11-72 provided that the act shall expire 5 years from the date of implementation of an approved federal waiver and rules promulgated by the Mayor.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 12-372, the "Self-Sufficiency Promotion Emergency Amendment Act of 1998", see Mayor's Order 98-143, August 25, 1998 (45 DCR 6596).

Editor's notes. — Entitlement to public assistance: Section 10 of D.C. Law 9-271 provided that notwithstanding subchapter V of Chapter 2 of Title 4, medical and geriatric parolees shall be entitled to general public assistance pending their application for eligibility.

§ 4-205.02. Residency requirement.

The Mayor in determining eligibility for a person to receive TANF, GAC, and Emergency Shelter Family Services benefits shall not impose, as a condition of eligibility, any residence requirement which excludes any individual who resides in the District.

(Apr. 6, 1982, D.C. Law 4-101, § 502, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(c), 38 DCR 4205; Feb. 5, 1994, D.C. Law 10-68, § 10(b), 40 DCR 6311; Mar. 20, 1998, D.C. Law 12-60, § 701(e), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(i), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 101(c) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(e) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(i) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(c) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(c) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778).

For temporary amendment of section, see § 2(e) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 2(x) of the Public Assistance Legislative Re-

view Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 701(e) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(i) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(i) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(i) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(i) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.03. Determination of residency.

(a) A resident of the District of Columbia is one who is living in the District of Columbia voluntarily and not for a temporary purpose; that is, one with no intention of presently removing himself or herself therefrom. A child is residing in the District if he or she is making his or her home in the District.

(b) Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished, shall not interrupt continuity of residence.

(c) Residence as defined for eligibility purposes shall not depend upon the reason for which the individual entered the District, except insofar as it may bear on whether he is there for a temporary purpose.

(Apr. 6, 1982, D.C. Law 4-101, § 503, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.3. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.04. Relocation of recipients to another jurisdiction.

Recipients of assistance from the District who move to another jurisdiction with intent to remain in that State shall be ineligible to receive assistance from the District immediately upon the date of the recipient's last day of residency in the District of Columbia.

(Apr. 6, 1982, D.C. Law 4-101, § 504, 29 DCR 1060; Oct. 27, 1995, D.C. Law 11-72, § 201(b), 42 DCR 4728; Apr. 18, 1996, D.C. Law 11-110, § 64, 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 3-205.4. torical and Statutory Notes following § 4-205.61.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.11.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.05. Definitions.

For the purpose of this subchapter, the term:

(1) "Earned income" means income in cash or in kind produced as a result of the performance of services currently rendered by an individual. In the case of an applicant or recipient of TANF, the term "earned income" shall not include the amount of earned income credit payments actually received.

(2) "Family" means the total applicant or assistance unit.

(3) "Gross income" means total earned income before any deductions required by law.

(4) "Income" means earned or unearned money received by an individual that is of gain or benefit to the individual or assistance unit. The term "income" includes the following: wages; salary; gross income from self-employment; training allowances, stipends or other payments for work experience (to the extent that they are countable as income pursuant to § 4-205.13a); District public assistance payments; federal public assistance payments (to the extent permitted under federal law); pensions; retirement benefits; annuities; unemployment compensation; worker's compensation; child support or alimony payments made directly to a member of the assistance unit from someone who is not a member of the assistance unit; interest; dividends; scholarships; rent received from a tenant or lessee; and money that is required by District or federal law to be deemed from a person who is not a member of the assistance unit. The term "income" does not include: a non-recurring lump-sum payment (which shall be considered a resource); payments made by a government

agency to a third party for child care, housing, or medical assistance; a relocation payment under § 42-2851.05; or any payment that is specifically excluded by federal or District law from consideration as income for the purpose of determining eligibility for public assistance.

(5) "Mandatory deductions" means those deductions required by law or as a condition of employment.

(Apr. 6, 1982, D.C. Law 4-101, § 505, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(a), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(b), 32 DCR 3778; Mar. 15, 1990, D.C. Law 8-86, § 2(a), 37 DCR 48; Apr. 20, 1999, D.C. Law 12-241, § 2(j), 46 DCR 905; Apr. 19, 2002, D.C. Law 14-114, § 292(b), 49 DCR 1468.)

Prior Codifications. — 1981 Ed., § 3-205.5.

Effect of amendments. — D.C. Law 14-114, in par. (4), substituted "payments made by a government agency to a third party for child care, housing, or medical assistance; a relocation payment under § 42-2851.05;" for "payments made by a government agency to a third party for child care, housing, or medical assistance;"

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(j) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900). For temporary amendment of section, see § 2(j) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(j) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(j) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR

521), and § 2(j) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — Law 5-150, the "District of Columbia Public Assistance Act of 1982 Temporary Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-530, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 23, 1984, and November 7, 1984, respectively. Signed by the Mayor on November 29, 1984, it was assigned Act No. 5-214 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 8-67. — Law 8-67, the "District of Columbia Public Assistance Act of 1982 Conforming Amendments Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-390, which was retained by Council. The Bill was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Signed by the Mayor on October 27, 1989, it was assigned Act No. 8-102 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-86. — Law 8-86, the "District of Columbia Public Assistance Act of 1982 Conforming Amendments Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-391, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-136 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 14-114. — Law 14-114, the “Housing Act of 2002”, was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Fi-

nance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

§ 4-205.05a. General Assistance for Children program.

(a) A General Assistance for Children program is established to provide the same benefits for a child as the child would receive under TANF if the child’s caretaker could demonstrate a family relationship with the child that is required in the TANF program. The needs of a caretaker shall not be considered when determining of an assistance unit’s GAC benefits. A caretaker of a child receiving GAC shall not be considered a GAC recipient, or a member of the GAC assistance unit, even if the caretaker receives the payment on the child’s behalf.

(b) In order to be eligible for GAC assistance benefits an applicant must pursue all available federal benefits prior to approval of GAC benefits.

(c) All provisions of this chapter that apply to determinations of eligibility for and payments of TANF shall apply to determinations of eligibility for and payments of GAC, except that:

(1) The income, assets, and resources of the caretaker shall not be considered in determining eligibility of the assistance unit for GAC; and

(2) An assistance unit headed by a minor shall be ineligible to receive GAC.

(c-1)(1) GAC benefits shall only be provided for a child if the child’s caretaker can produce authorization from the child’s legally responsible relative or a court of competent jurisdiction designating the applicant as the temporary or permanent caretaker for the child, to the extent such authorization is reasonably obtainable by the caretaker. The Mayor shall specify what constitutes a valid authorization, but shall not require as a condition of eligibility that any specific court action is required concerning the care of the child.

(2) Where authorization from the child’s legally responsible relative is not reasonably obtainable by the caretaker, the caretaker may offer other proof of a custodial relationship between the caretaker and the child. Proof may include, but is not limited to, leases indicating that the child lives with the caretaker, medical records, or school records bearing the caretaker’s signature or affidavits from teachers, social workers, medical staff, or other professionals involved in the family’s life.

(d) Repealed.

(e) The earnings of a GAC program child who is a full-time student and who is employed full-time or part-time, or who is a part-time student and who is employed part-time, shall be disregarded.

(f) The following amounts shall be disregarded from the gross monthly earnings of a GAC program child who is a part-time student and employed

full-time: The first \$7.50, mandatory payroll deductions, and the cost of producing income, as determined by rule by the Mayor.

(g) If the source of income is other than that provided for in subsection (d), (e), or (f) of this section, no more than \$7.50 shall be disregarded.

(h) The Mayor shall issue rules to implement this section in accordance with subchapter I of Chapter 5 of Title 2.

(Apr. 6, 1982, D.C. Law 4-101, § 505a, as added Aug. 17, 1991, D.C. Law 9-27, § 2(d), 38 DCR 4205; Feb. 5, 1994, D.C. Law 10-68, § 10(c), 40 DCR 6311; Apr. 20, 1999, D.C. Law 12-241, § 3, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.5a.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 101(d) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 3 of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 3 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(d) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(d) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 3 of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 3 of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 3 of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 3 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 3 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 3 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 3 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 9-27. — Law 9-27, the “Public Assistance Act of 1982 Budget Conformity Amendment of 1991,” was introduced in Council and assigned Bill No. 9-159, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-54 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.06. Old Age Assistance and Aid to the Permanently and Totally Disabled need determination. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 506, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(k), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.6.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(k) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(k) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(k) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.07. Aid to the Blind need determination. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 507, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(k), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.7.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(k) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(k) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(k) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.08. GPA need determination. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 508, 29 DCR 1060; March 20, 1998, D.C. Law 12-60, § 701(f), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 3-205.8.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(f) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) repeal of section, see § 701(f) of Fiscal Year 1998 Revised Budget

Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.09. AB and ATD self-supporting plans. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 509, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(k), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.9.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(k) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(k) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(k) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(k) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.10. TANF income eligibility standards.

(a) When the gross income of family applying for, or receiving TANF exceeds 100% of the standard of assistance for a family of the same composition, as set forth in § 4-205.52, the family is not eligible for assistance. Income deemed from stepparents shall be counted in gross family income to the extent permitted pursuant to § 4-205.22. Income deemed from an alien sponsor shall be counted in gross family income to the extent required by § 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2105; 8 U.S.C. § 1631). Payments to correct underpayments to TANF or POWER recipients are not considered income or as a resource either in the month the payment is made or in the following month.

(b) If the gross income, computed pursuant to subsection (a) of this section, is 100% or less of the standard of assistance, financial conditions of eligibility shall be calculated in accordance with § 4-205.11, 4-205.29, 4-205.33(b), and 4-217.05.

(Apr. 6, 1982, D.C. Law 4-101, § 510, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(b), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(c), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2(l), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.10.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(l) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary

amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(l) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(l) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act

12-425, July 31, 1998, 45 DCR 5682), § 2(l) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(l) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

CASE NOTES

In general.

Reductions in income of AFDC recipients, which in one case was caused by garnishment of wages because of a default judgment against recipient who signed note as an accommodation maker and which in the other case resulted from recipient's voluntary assignment of wages to repay debt owed to credit union, were the result of recipients' voluntary acts of incurring the debts and were not mandatory deductions for purpose of determining the entitlement of recipients to AFDC benefits. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. *Harris v. District of Columbia Dep't of Human Resources, Social Rehabilitation Administration*, 304 A.2d 868, 1973 D.C. App. LEXIS 293 (1973).

District of Columbia Department of Human Resources regulation concerning determination of income for purpose of computing aid to families with dependent children and stating that

all income must be actually available to the applicant or recipient for his current use cannot be interpreted as covering only income available for current use, particularly in view of other regulations stating that voluntary deductions for future benefits are not to be excluded from gross income. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. *Harris v. District of Columbia Dep't of Human Resources, Social Rehabilitation Administration*, 304 A.2d 868, 1973 D.C. App. LEXIS 293 (1973).

Where no biweekly payment by father for son was intended for or used by public assistance claimant for other children, the payments were not income available to the claimant and her entire family, and monthly aid to families with dependent children payment was not to be reduced. D.C. Code § 3-202(a)(4). *Howard v. Department of Public Welfare*, 272 A.2d 676, 1971 D.C. App. LEXIS 264 (App. 1971).

§ 4-205.11. TANF need determination.

(a) In determining the need of families who are applying for or receiving TANF:

(1) Deduct such amount for a work-related expense as the Mayor shall specify through rulemaking. If the individual is self-employed, work expenses directly related to producing the goods or services, and without which the goods or services could not be produced, shall be excluded from the gross earned income total;

(2) Deduct the cost of care of each dependent child, or care of an incapacitated adult living in the same home and receiving TANF or POWER, up to a maximum amount that the Mayor shall specify through rulemaking. The maximum amount deductible for the cost of care of a child may vary depending upon the age of the child;

(3) For initial applicants, determine whether the monthly income, after disregards allowed under paragraph (1) or (2) of this section, exceeds the standard of assistance. If so, the family is ineligible for assistance;

(4) Disregard all of the monthly gross earned income of each child receiving TANF if the child is a full-time student, or is a part-time student

provided he is not employed full time. A part-time student must have a school schedule that is equal to at least one half of a full-time curriculum;

(4A)(A) For individuals otherwise found eligible to receive TANF, disregard from the individual's earned income a specific dollar amount and/or a percentage of the earned income. The Mayor shall establish, through rulemaking, the amount and/or percentage of earned income to be disregarded, the period of time during which any earned income may be disregarded, and other rules necessary to implement this provision. The rules shall reflect the District's interests in rewarding work, assisting needy families, and promoting self-sufficiency.

(B) To the extent permitted under federal law, in calculating the eligibility for Medicaid (other than Transitional Medicaid) of a child or a family with minor children, the Mayor shall disregard earned income to the same extent that earned income is disregarded under TANF. In calculating eligibility for Transitional Medicaid, subject to the approval of the U.S. Department of Health and Human Services ("HHS"), the Mayor shall disregard income for the first 12 months of Transitional Medicaid pursuant to the provisions established in § 1925(a) of the Social Security Act, approved October 13, 1988 (102 Stat. 2385; 42 U.S.C. § 1396r-6(a)), and shall disregard income for the second 12 months of Transitional Medicaid pursuant to the provisions established in § 1925(b) of the Social Security Act (42 U.S.C. § 1396r-6(b)). Absent approval by HHS, income shall be disregarded pursuant to applicable federal law.

(5) Repealed.

(5A) Disregard any federal earned income tax credit received;

(6) Income earned by any adult member of the assistance unit shall not be disregarded for any month in which the Department determines that such member:

(A) Within 60 days preceding such month, without good cause (as specified in rules established by the Mayor and adopted by the Council), terminated his or her employment, reduced his or her gross earned income, or refused a bona fide offer of employment;

(B) Voluntarily requested assistance be terminated for the sole purpose of evading any time limit placed on the disregarding of earned income that may be established by rule by the Mayor;

(C) Without good cause, failed to file the periodic report required for that period on time; or

(D) Failed to inform the Mayor, without good cause, about earnings affecting eligibility as required by § 4-205.53(a) or § 4-205.54. The penalty for this failure shall be applied until the recipient's next periodic report is filed and processed by the Mayor;

(7) Repealed;

(8) Beginning on October 1, 2005, disregard up to the first \$150 received per month by the assistance unit that represents a current monthly child support obligation or a voluntary child support payment from an absent parent or spouse; and

(9) Disregard any subsidy received under the program established by Chapter 2A of this title.

(b) The income and assets of a parent living in the same household as a dependent child, but not included in the assistance unit because the parent is ineligible for TANF, shall be considered available to the assistance unit to the extent that the income and assets of a deemed parent, as defined in § 4-205.22, would be considered available to the assistance unit. The income of a stepparent of the dependent child shall be considered available to the assistance unit to the extent required under § 4-205.22. In the case of a dependent child whose parent is a minor, the income of the minor parent's own parent or legal guardian living in the same household as the minor parent and the minor parent's dependent child shall be considered available to the extent required under § 4-205.22.

(Apr. 6, 1982, D.C. Law 4-101, § 511, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(c), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(d), 32 DCR 3778; Mar. 15, 1990, D.C. Law 8-86, § 2(b), 37 DCR 48; Oct. 27, 1995, D.C. Law 11-72, § 201(c), 42 DCR 4728; Apr. 18, 1996, D.C. Law 11-110, § 9(a), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 8(a), 44 DCR; Apr. 17, 1999, D.C. Law 12-241, § 2(m), 46 DCR 905; Oct. 20, 2005, D.C. Law 16-33, § 5032(a), 52 DCR 7503; Mar. 8, 2006, D.C. Law 16-69, § 201, 53 DCR 54; Mar. 2, 2007, D.C. Law 16-191, § 91(a), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 3-205.11.

Effect of amendments. — D.C. Law 16-33, in subsec. (a)(5A), deleted “and” at end of subsec.; in subsec. (a)(6)(D), substituted “; and” for period at end of subsec.; and added subsec. (a)(8).

D.C. Law 16-69, in subsec. (a)(6)(D), deleted “and” from the end; in subsec. (a)(8), substituted “; and” for a period; and added subsec. (a)(9).

D.C. Law 16-191, in the section heading, substituted “TANF” for “AFDC”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e), (x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(e), (x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(m) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(e) and (x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778); § 2(e) and (x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(e) and (x) of the Public

Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(m) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(m) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(m) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(m) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see §§ 5032(a), 5033 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 201 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For

legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 8-67. — For legislative history of D.C. Law 8-67, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 8-86. — For legislative history of D.C. Law 8-86, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.06.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Short title. — Short title of subtitle D of title V of Law 16-33: Section 5031 of D.C. Law 16-33 provided that subtitle D of title V of the act may be cited as the Child Support Pass-through Establishment Amendment Act of 2005.

Expiration of Law 11-72. — See note to § 4-205.01.

Editor’s notes. — Sec. 5033. Applicability.

This subtitle shall apply as of April 1, 2006.

Section 5033 of D.C. Law 16-33 provided: “Sec. 5033. Applicability. This subtitle shall apply as of April 1, 2006.”

CASE NOTES

Reduction of benefits.

Council of District of Columbia, confronted with serious revenue shortfall, did not unlawfully reduce benefit entitlements of Aid to Families with Dependent Children (AFDC) recipients due to their receipt of food stamp allotments, despite fact that report by Council’s Committee on Human Services indicated that loss of AFDC benefits would be partially offset by increase in food stamp allotments to some recipients, where facts about food stamps were mentioned only to reflect accurately consequences of proposed reduction and where Council did not use availability of food stamps to calculate reduction in AFDC benefits but, rather, used rollback of Cost of Living Adjustment (COLA) which AFDC recipients had previously received. Food Stamp Act of 1977,

§ 8(b), 7 U.S.C. (1988 Ed.), § 2017(b); Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq.; D.C. Code 1981, § 3-205.10 et seq. Quattlebaum v. Barry, 671 A.2d 881, 1995 D.C. App. LEXIS 256 (1995).

Council of District of Columbia’s rollback of Aid to Families with Dependent Children (AFDC) benefits to prior levels did not transgress duty of Council to inform itself of current minimum needs before modifying payment levels, where Council was aware of current minimum needs as reflected in cumulative cost of living increases for past approximately five years. Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq.; D.C. Code 1981, §§ 3-205.10 et seq., 3-205.44; § 3-205.52(d) (1990). Quattlebaum v. Barry, 671 A.2d 881, 1995 D.C. App. LEXIS 256 (1995).

§ 4-205.11a. Time limit for receipt of TANF benefits.

(a) Federally-funded TANF benefits shall not be provided to any assistance unit that includes an adult who has received federally-funded TANF benefits for 60 months (whether or not consecutive) after February 28, 1997.

(b) In determining the number of months during which an individual has

received federally-funded TANF benefits, the District shall disregard any month for which TANF benefits were provided with respect to the individual when the individual was:

(1) A minor child; and

(2) Not the head of an assistance unit or married to the head of an assistance unit.

(c) For purposes of this section, a TANF recipient shall not be considered to have been provided benefits in any month in which the recipient did not actually receive TANF benefits, pursuant to § 4-205.51, because the benefit check prior to adjustments would have been less than \$10.

(d) In determining the number of months during which an adult has received federally funded TANF benefits, any month shall be disregarded if during that month the adult lived in Indian country (as defined in 18 U.S.C. § 1151) or in an Alaskan Native village, if the most reliable data available with respect to the month or a period that includes the month indicate that at least 50% of the adults living in Indian country or in the Alaskan Native village were not employed.

(e) The Mayor may exempt an assistance unit from the requirements of subsection (a) of this section by reason of hardship or if the assistance unit includes an individual who has been battered or subject to extreme cruelty. For purposes of this subsection, an individual has been battered or subject to extreme cruelty if that individual has been subjected to:

(1) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(2) Sexual abuse;

(3) Sexual activity involving a dependent child;

(4) Forced engagement in nonconsensual sexual acts or activities;

(5) Threats of, or attempts at, physical or sexual abuse;

(6) Mental abuse; or

(7) Neglect or deprivation of medical care.

(f) A monthly average of no more than 20% of the average monthly number of assistance units for which federally-funded TANF benefits are provided during the current fiscal year or the prior fiscal year (as the Mayor may elect) may be exempt under subsection (e) of this section.

(Apr. 6, 1982, D.C. Law 4-101, § 511a, as added Apr. 20, 1999, D.C. Law 12-241, § 2(n), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.11a.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(f) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(f) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(n) of Self-Sufficiency Promotion

Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary addition of section, see § 2(f) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(f) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), § 2(f) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-306, March 20, 1998, 44 DCR 1900).

For temporary addition of section, see § 2(n) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(n) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(n) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998

(D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(n) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.11b. Reduction in benefits for long-term TANF recipients.

An individual who has received federally or locally funded TANF benefits in the District of Columbia for more than 60 months, whether or not consecutive, shall receive a reduction in his or her maximum benefit in accordance with § 4-205.52 and as set forth in rules issued pursuant to § 4-202.05.

(Apr. 6, 1982, D.C. Law 4-101, § 511b, as added Apr. 8, 2011, D.C. Law 18-370, § 522(b), 58 DCR 1008.)

Emergency legislation. — For temporary (90 day) addition of section, see § 522(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

§ 4-205.11c. Human impact statement.

Within 60 days of January 19, 2011, the Auditor shall conduct an assessment of the impact of reductions in assistance pursuant to this chapter on families and their children and issue a human impact statement, which shall include:

- (1) The number of families affected;
- (2) The number of children affected in the following age categories;
 - (A) Infant — 3 years old;
 - (B) 4-9 years olds;
 - (C) 10-13 years old; and
 - (D) 14-18 years old;
- (3) A sample of a least 35 families, including a consideration of the children regarding:
 - (A) Changes in school performance;
 - (B) Changes in after-school performance;
 - (C) Changes in health status; and
 - (D) New interactions with Court Social Services or Department of Youth Rehabilitative Services; and
- (4) The number of service providers providing training programs based on specific performance-based measures, including:
 - (A) A description of programs being offered; and
 - (B) The enrollment figures in each program.

(Apr. 6, 1982, D.C. Law 4-101, § 511c, as added Apr. 8, 2011, D.C. Law 18-370, § 522(b), 58 DCR 1008.)

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

§ 4-205.12. Food stamp coupon allotment disregarded. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 512, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(o), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.12.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(o) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of §§ 4-205.12 and 4-205.13, see § 2(o) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(o) of the Self-Sufficiency Promotion Legislative Review

Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(o) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(o) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.13. Enumerated income disregarded. [Repealed].

Repealed.

(Mar. 20, 1998, D.C. Law 12-60, § 701(g), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(p), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.13.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) repeal of section, see § 2(p) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(p) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR

4270), § 2(p) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(p) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(p) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.13a. Treatment of payment for costs of work participation.

A stipend, allowance, or any other payment to a public assistance recipient reimbursing the recipient for the reasonable costs of participation in a work activity (as described in § 4-205.19d(c)) shall be excluded from income only to the extent any such stipend, allowance, or other payment would be excluded

from income under the Food Stamp Program pursuant to 7 U.S.C. § 2011 et seq. and 7 C.F.R. § 273.9(b) and (c).

(Apr. 6, 1982, D.C. Law 4-101, § 513a, as added Apr. 20, 1999, D.C. Law 12-241, § 2(q), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.13a.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(q) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary addition of section, see § 2(q) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(q) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(q) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(q) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.14. Determination of GPA need standard. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 514, 29 DCR 1060; March 20, 1998, D.C. Law 12-60, § 701(h), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 3-205.14.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(h) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) repeal of section, see § 2001(b) of Fiscal Year 1998 Revised Budget

Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.15. Standards for inclusion in TANF assistance unit.

(a) An application on behalf of a dependent child shall include in the TANF assistance unit the following individuals, if living in the same household as the dependent child and otherwise eligible:

(1) The parent or parents of a dependent child, except that a parent who marries a person with whom the parent does not have any child in common may, at the parent's request, choose not to be included in the dependent child's assistance unit;

(1A) The step-parent of a dependent child, if there is a parent of the dependent child in the home who chooses to be included in the dependent child's assistance unit; and

(1B) Any dependent child of a step-parent who is included in a dependent step-child's assistance unit; and

(2) All blood-related, half-blooded-related, and adopted brothers and

sisters of the dependent child who are themselves dependent children under age 18 or age 18 and expected to complete high school before reaching age 19; and

(3) Repealed.

(b) For the purposes of subsection (a) of this section, the Mayor shall determine the meaning of the term “full-time student”, shall determine which vocational or technical training courses are equivalent to the level of secondary school, and shall determine which factors will be considered in deciding whether an individual may reasonably be expected to complete the program of study or training before reaching age 19.

(c) In order to be included in an TANF assistance unit under this section, a dependent child aged 16 or 17 years must be enrolled in a program of secondary education or vocational or technical training.

(d) An application on behalf of a dependent child may include in the TANF assistance unit a caretaker relative other than a parent, provided that neither parent is living in the home and the caretaker relative requests to be included, meets each eligibility requirement, and lives in the same household as the dependent child.

(e) Individuals who are ineligible to receive TANF, and who shall be excluded from the TANF assistance unit during the period of ineligibility, shall include:

(1) An individual who receives SSI benefits;

(2) An alien who is ineligible for TANF as a result of the deeming of a sponsor’s income and resources to the alien pursuant to § 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2105; 8 U.S.C. § 1631);

(3) An alien who is ineligible for TANF because the alien does not meet the citizenship and alienage requirements of § 4-205.24(a);

(4) An individual who is ineligible for TANF as the result of the imposition of a sanction; and

(5) An individual who is ineligible for TANF, pursuant to § 4-205.33, due to receipt of lump-sum income.

(6) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 515, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(d), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(e), 32 DCR 3778; Sept. 26, 1995, D.C. Law 11-52, § 502(c), 42 DCR 3684; Apr. 17, 1999, D.C. Law 12-241, § 2(r), 46 DCR 905; Dec. 17, 2009, D.C. Law 18-94, § 2(b), 56 DCR 8521.)

Cross references. — Public postsecondary education reorganization, tuition grants, “eligible caretaker relative” and “eligible legal guardian” defined, see § 38-1207.01.

Prior Codifications. — 1981 Ed., § 3-205.15.

Effect of amendments. — D.C. Law 18-94, in subsec. (a), substituted “may, at the parent’s request, choose not to” for “shall not” in par. (1), added pars. (1A) and (1B), and repealed par. (3);

and, in subsec. (e), added “and” at the end of par. (4), substituted a period for “; and” at the end of par. (5), and repealed par. (6).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 502(c) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of sec-

tion, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-180, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(r) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 502(c) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 502(c) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(r) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372,

June 9, 1998, 45 DCR 4270), § 2(r) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(r) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(r) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2(b) of Public Assistance Emergency Amendment Act of 2009 (D.C. Act 18-198, October 9, 2009, 56 DCR 8132).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-94. — For Law 18-94, see notes following § 4-201.01.

§ 4-205.16. Contribution guidelines for nonassistance unit children. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 516, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(s), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.16.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(s) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(s) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(s) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(s) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(s) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.17. Definitions. [Repealed].

Repealed.

(Apr. 16, 1982, D.C. Law 4-101, § 517, 29 DCR 1060; Mar. 14, 1984, D.C. Law 5-53, § 2(a), 30 DCR 6278; Apr. 20, 1999, D.C. Law 12-241, § 2(t), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.17.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) repeal of section, see § 2(t) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(t) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR

4270), § 2(t) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(t) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(t) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.18. Child's eligibility.

(a) A needy child is eligible for TANF.

(b) Repealed.

(c) Repealed.

(d)(1) A minor child otherwise eligible for TANF benefits under this section, who has been, or is expected by a parent, guardian, or other caretaker to be absent from the home for more than 90 consecutive days shall be ineligible to receive TANF benefits unless the Mayor determines, in accordance with rules promulgated by the Mayor, that there is good cause for the child to be absent from the home for more than 90 days and continue to receive TANF benefits.

(2) A parent, guardian, or other caretaker of a minor child shall be determined ineligible to receive TANF benefits if the parent, guardian, or caretaker fails to notify the Mayor of the absence of the child from the home after the 5-day period beginning with the date on which it becomes clear to the parent, guardian, or caretaker that the child will be absent from the home for more than 90 consecutive days.

(e) Nothing in this section shall be interpreted to preclude the Mayor from sanctioning any or all members of an assistance unit for failure to comply with TANF program rules, if such sanction is otherwise permitted under this chapter.

(Apr. 6, 1982, D.C. Law 4-101, § 518, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(u), 46 DCR 905; Dec. 17, 2009, D.C. Law 18-94, § 2(c), 56 DCR 8521; Apr. 8, 2011, D.C. Law 18-370, § 522(c), 58 DCR 1008.)

Prior Codifications. — 1981 Ed., § 3-205.18.

Effect of amendments. — D.C. Law 18-94 rewrote subsec. (a) and repealed subsec. (b).

D.C. Law 18-370, in subsec. (d), substituted "TANF" for federally-funded TANF".

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(g) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-180, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(u) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(g) and (x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(g) and (x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(g) and (x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(u) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(u) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act

12-425, July 31, 1998, 45 DCR 5682), § 2(u) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(u) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2(c) of Public Assistance Emergency Amendment Act of 2009 (D.C. Act 18-198, October 9, 2009, 56 DCR 8132).

For temporary (90 day) amendment of section, see § 522(d) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-94. — For Law 18-94, see notes following § 4-201.01.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

§ 4-205.19. Application; assignment of rights for child support.

(a) Application for public assistance shall be accepted from, or on behalf of, any person who believes himself or herself eligible for public assistance. The application shall be made in the manner and form prescribed by the Council, and shall contain such information as the Mayor shall require.

(b) As a condition of eligibility for public assistance, each applicant or recipient shall assign to the District any rights to support from any other person that the applicant or recipient may have in the applicant's or recipient's own behalf, or on behalf of any other family member for whom the applicant or recipient is applying for or is receiving assistance.

(c) The assignment referred to in subsection (b) of this section:

(1) Is effective as to both current and accrued child support obligations, except as limited by paragraphs (4) and (5) of this subsection;

(2) Takes effect upon a determination that the applicant is eligible for assistance;

(3) Terminates when an applicant ceases to receive assistance except with respect to the amount of any unpaid support obligation accrued under the assignment, as limited by paragraph (4) of this subsection;

(4) With respect to an applicant or recipient of TANF or POWER benefits, shall not exceed the total amount of cash assistance provided to the family and shall not apply with respect to any support, other than support collected pursuant to § 464 of the Social Security Act, approved August 13, 1981 (95

Stat. 860; 42 U.S.C. § 664), that accrued before the family received TANF or POWER benefits and that the District has not collected by:

(A) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

(B) The date that the family ceases to receive assistance, if the assignment is executed on or after October 1, 2000; and

(5) Beginning on October 1, 2005, shall not apply to up to the first \$150 received each month by the assistance unit that represents a current monthly child support obligation or a voluntary child support payment from an absent parent or spouse.

(Apr. 6, 1982, D.C. Law 4-101, § 519, 29 DCR 1060; Feb. 24, 1987, D.C. Law 6-166, § 33(b), 33 DCR 6710; Apr. 20, 1999, D.C. Law 12-241, § 2(v), 46 DCR 905; Oct. 20, 2005, D.C. Law 16-33, § 5032(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 3-205.19.

Effect of amendments. — D.C. Law 16-33, in subsec. (c)(1), substituted “paragraphs (4) and (5)” for “paragraph (4)”; in subsec. (c)(3), deleted “and” at the end of the subsec; in subsec. (c)(4)(B), substituted “2000; and” for “2000.”; and added subsec. (c)(5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(h) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(h) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(v) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(h) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(h) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(h) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(v) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(v) of the

Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(v) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(v) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see §§ 5032(b), 5033 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-166. — Law 6-166, the “D.C. Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 4-205.11.

Editor’s notes. — Section 5033 of D.C. Law 16-33 provided: “Sec. 5033. Applicability. This subtitle shall apply as of April 1, 2006.”

§ 4-205.19a. Redetermination of eligibility.

For purposes of §§ 4-205.19b, 4-205.19c, 4-205.19f and 4-205.19g, a TANF

recipient shall be considered an applicant for TANF benefits at each time of redetermination of eligibility for TANF. When a current TANF recipient is considered to be an applicant pursuant to this subsection, the Mayor may require the individual to participate in a work activity other than job search or job readiness in order to comply with this section, and § 4-205.19c shall apply if the individual fails to comply with any such work activity that the Mayor may require.

(Apr. 6, 1982, D.C. Law 4-101, § 519a, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19a.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of §§ 3-205.19a and 3-205.19b 1981 Ed., see § 2(i) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and §§ 3-205.19a and 3-205.19b 1981 Ed., see § 2(i) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary addition of §§ 3-205.19a and 3-205.19b 1981 Ed., see § 2(i) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary addition of §§ 3-205.19a through 3-205.19l 1981 Ed., see § 2(w) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(w) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(w) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(w) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19b. Job search and job readiness requirements for TANF applicants.

(a)(1) Using a standard process and mechanism, the Mayor shall make a detailed assessment of the skills, prior work experience, employability, and barriers to employment, including domestic violence, mental health, and substance abuse (“assessment”) of each TANF recipient.

(2) As a condition of eligibility, all TANF applicants shall complete the assessment.

(3) Staff responsible for administering the assessment shall receive specific training regarding the administration of the assessment and the follow-up services and programs available to eligible TANF recipients. Training shall include a focus on identifying barriers to employment, such as issues of domestic violence, mental health, and substance abuse.

(a-1) As a condition of eligibility, all work-eligible TANF applicants shall complete an employment program orientation.

(b)(1) Following the assessment and a positive eligibility determination, a TANF recipient in a single-parent assistance unit shall be required to sign and

comply with an agreement to participate in work activities as a condition of continuing eligibility for TANF benefits when the recipient:

(A) Has a child under 6 years of age and is not engaged in paid employment for at least 20 hours per week (or an average of 80 hours per month); or

(B) Has a child 6 years of age and is not engaged in paid employment for at least 30 hours per week (or an average of 120 hours per month).

(2) The Mayor shall determine the nature and scope of the work activities that shall be required based on the person's assessment; provided, that the Mayor shall not require the TANF recipient to participate in work activities for more than 35 hours per week.

(3) This subsection shall not apply to a TANF recipient who is exempt pursuant to § 4-205.19g or subject to the school-attendance requirements of § 4-205.65.

(c) Following the assessment, each parent in a 2-parent assistance unit who is not engaged in paid employment for at least 35 hours per week (or an average of 140 hours per month) and who is not required to meet the school attendance requirements of § 4-205.65 shall be required to sign and comply with an agreement to participate in job search or job readiness activities as a condition of eligibility for TANF benefits, unless the TANF recipient is exempt pursuant to § 4-205.19f, or the other parent in the family is engaged in paid employment and the 2 parents together work for at least 35 hours per week (or for at least 55 hours per week, if the family receives federally-funded child care and no adult in the family has a disability, or caring for a child disability). The Mayor shall determine the nature and scope of the activities based on the assessment. In no event shall the Mayor require the TANF recipient to participate in job search or job readiness activities for more hours than would be necessary for the combined number of hours of participation of both parents to equal 35 hours per week (or 55 hours per week, if the family receives federally-funded child care and no adult in the family has a disability, or caring for a child with a disability).

(d) The Mayor shall promulgate rules to:

(1) Screen and identify applicants with a history of domestic violence while maintaining the confidentiality of such persons;

(2) Refer such individuals to counseling and supportive services; and

(3) Waive, pursuant to a determination of good cause, other program requirements in cases where compliance with such requirements would make it more difficult for such individuals to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(Apr. 6, 1982, D.C. Law 4-101, § 519b, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Apr. 24, 2007, D.C. Law 16-305, § 14(a), 53 DCR 6198; Mar. 3, 2010, D.C. Law 18-111, § 5171(a), 57 DCR 181; Apr. 8, 2011, D.C. Law 18-366, § 2(a), 58 DCR 981.)

Prior Codifications. — 1981 Ed., § 3-205.19b.

Effect of amendments. — D.C. Law 16-305 substituted “has a disability” for “is disabled”, throughout the section.

D.C. Law 18-111 rewrote subsec. (a); and added subsec. (a-1). Prior to amendment, subsec. (a) read as follows: “(a) Application for public assistance shall be accepted from, or on behalf of, any person who believes himself or herself eligible for public assistance. The application shall be made in the manner and form prescribed by the Council, and shall contain such information as the Mayor shall require.”

D.C. Law 18-366 rewrote subssecs. (a) and (b); and, in subsec. (c), substituted “assessment” for “preliminary assessment”, and substituted “the TANF recipient” for “the applicant”.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 3-205.19a.

For temporary (90 day) amendment of section, see § 5171(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5171(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 4-110.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-366. — Law 18-366, the “TANF Educational Opportunities and Accountability Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-1007, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-717 and transmitted to both Houses of Congress for its review. D.C. Law 18-366 became effective on April 8, 2011.

Short title. — Short title: Section 5170 of D.C. Law 18-111 provided that subtitle R of title V of the act may be cited as the “TANF Work Incentives Act of 2009”.

§ 4-205.19c. Failure to comply with job search and job readiness requirements for TANF applicants.

(a) If a TANF applicant who is not exempt pursuant to § 4-205.19g(a) fails, without good cause, to participate in work activities pursuant to § 4-205.19b, the failure shall result in a sanction pursuant to § 4-205.19f.

(b) The Mayor shall promulgate rules defining what constitutes good cause for failure to participate in work activities, in addition to those circumstances described in subsections (c), (d), and (e) of this subsection. The rules promulgated by the Mayor shall require that notice be provided to TANF applicants of what constitutes good cause for failure to participate in work activities.

(c) The Mayor shall not sanction a TANF applicant based on the failure of an applicant to participate in work activities if the Mayor has failed to make a preliminary assessment pursuant to § 4-205.19b(a).

(d) The Mayor shall not sanction a TANF applicant based on the failure of a TANF applicant to participate in work activities if the applicant is a single custodial parent caring for a child under 6 years old, and the applicant proves that he or she has a demonstrated inability, as determined by the Mayor, to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the applicant's home or work site is unavailable;

(2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(e)(1) The Mayor shall not sanction a TANF applicant for failure to participate in work activities if the Mayor controls the availability of placements in those activities and a placement in those activities is not available to the applicant.

(2) This subsection shall not apply if the Mayor makes a placement in another activity available to the applicant, provided that the replacement activity is consistent with the terms of the applicant's agreement to participate in work activities.

(f) Notwithstanding subsection (c), (d), or (e) of this section, the Mayor may sanction a TANF applicant if the applicant quits paid employment without good cause or voluntarily reduces income without good cause within 60 days before the determination of eligibility for TANF.

(Apr. 6, 1982, D.C. Law 4-101, § 519c, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Apr. 8, 2011, D.C. Law 18-366, § 2(b), 58 DCR 981.)

Prior Codifications. — 1981 Ed., § 3-205.19c.

Effect of amendments. — D.C. Law 18-366 substituted "in work activities" for "in job search or job readiness activities".

Emergency legislation. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-366. — For history of Law 18-366, see notes under § 4-205.19b.

§ 4-205.19d. Work participation requirements for TANF recipients.

(a) If the Mayor has assessed a TANF recipient pursuant to § 4-205.19b(a), the TANF recipient shall develop an individual responsibility plan with the Mayor that describes the steps the recipient is required to take to achieve self sufficiency and the services that the District shall provide to assist the recipient in attaining self sufficiency. The individual responsibility plan shall be based on the recipient's assessment at application.

(a-1) Repealed.

(b) Repealed.

(c) Subject to the exemptions listed in § 4-205.19g(b), a recipient who has developed an individual responsibility plan with the Mayor shall be required,

as part of that plan, to participate in work activities, which may include one or more of the following:

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience;
- (5) On-the-job training;
- (6) Job search and job readiness assistance;
- (7) Community service;
- (8) Vocational education training;
- (9) Job skills training directly related to employment;
- (10) Education directly related to employment;
- (10A) Satisfactory attendance in a secondary school or in a general equivalence program; or
- (11) Provision of child care services to an individual who is participating in a community service program.

(c-1)(1) The Mayor shall report and make public the following performance measures annually:

(A) "Job search and job readiness" means the act of seeking or obtaining employment or preparation to seek or obtain employment, including: life skills strategies and soft skills training, budget and credit counselling, substance abuse treatment, domestic violence support or services, mental health activities or rehabilitative activities for individuals who are otherwise employable as defined by the Work Verification Plan. Job search and job-readiness activities may count towards the work participation rates for a total of 6 weeks in a year, or 12 weeks in a year for states who meet the criteria established in section 403(b)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2123; 42 U.S.C. § 603(b)(5)).

(B) "Vocational educational training," not to exceed 12 months, means education programs that are directly related to the preparation of individuals for employment in current or emerging occupations that are provided by an accredited education or training organization such as a vocational-technical school, community college, post secondary institution, or proprietary school. Courses offered by such programs can include adult basic education, English as a Second Language ("ESL"), and literacy courses; provided, that the courses are part of the vocational training curriculum and are directly related to the preparation of individuals for employment in occupations that require training.

(C) "Job skills training directly related to employment" means training or education for-job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. This activity may include post-secondary education at an accredited university or college that leads to a bachelor's or advanced degree that is directly related to employment.

(D) "Education directly related to employment," in the case of a recipient who has not received a high school diploma or general educational development certificate ("GED") and needs specific employment training,

means education directly related to a specific job or job offer. This includes adult basic education, literacy, GED, and ESL activities.

(E) "Satisfactory attendance in secondary school or a general equivalence program" means regular attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.

(F) "Unsubsidized employment," means full or part-time employment in the public or private sector that is not subsidized by TANF or any other public program.

(G) "Subsidized private sector employment," means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(H) "Subsidized public sector employment," means employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(I) "Work experience," including work associated with the refurbishing of publicly-assisted housing, if sufficient private-sector employment is not available means a work activity performed in return for welfare that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment.

(J) "On-the-job training," means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(K) "Community service programs," mean structured programs and activities in which individuals perform work for the direct benefit of the community under the auspices of public or nonprofit organizations.

(L) "Providing child care services to an individual who is participating in a community service program" means providing child care to enable another TANF or state supplementary payment recipient to participate in a community service program.

(2) Participation in one of the work activities listed in subparagraphs (I) through (L) of paragraph (1) this subsection shall count towards federal work requirements when combined with participation in a work activities [sic] listed in subparagraphs (A) through (H) of paragraph (1) of this subsection for the number of hours specified in 45 CFR §§ 261.31-261.32.

(d) The Mayor shall periodically review each individual responsibility plan and revise each plan, if appropriate.

(e) Notwithstanding any other provision of this subchapter, nothing in this subchapter shall be construed to confer an entitlement to child care for any person.

(f) Subject to the availability of funds, the Mayor may provide monetary incentives to recipients for compliance with the federal work participation standards.

(g) The Mayor may promulgate rules to implement this section.

(Apr. 6, 1982, D.C. Law 4-101, § 519d, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Mar. 3, 2010, D.C. Law 18-111, § 5171(b), 57 DCR 181; Apr. 8, 2011, D.C. Law 18-366, § 2(c), 58 DCR 981.)

Prior Codifications. — 1981 Ed., § 3-205.19d.

Effect of amendments. — D.C. Law 18-111 added subsecs. (a-1), (f), and (g).

D.C. Law 18-366 rewrote subsecs. (a) and (c)(10); repealed subsecs. (a-1) and (b); and, added subsecs. (c)(10A) and (c-1).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

For temporary (90 day) amendment of section, see § 5171(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5171(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-205.19b.

Legislative history of Law 18-366. — For history of Law 18-366, see notes under § 4-205.19b.

§ 4-205.19e. Failure to comply with work requirements for TANF recipients.

(a) If a nonexempt TANF recipient fails, without good cause, to participate in an assessment pursuant to § 4-205.19d(a), to enter into an individual responsibility plan developed pursuant to § 4-205.19d(b) [(b) repealed], or to comply with the terms of such a plan, the failure shall result in a sanction pursuant to § 4-205.19f.

(b) The Mayor shall promulgate rules defining what constitutes good cause for failure to comply with an individual responsibility plan, in addition to those circumstances described in subsections (c), (d), and (e) of this section. The rules promulgated by the Mayor shall require that notice be provided to TANF recipients of what constitutes good cause for failure to comply with an individual responsibility plan.

(c) The Mayor shall not sanction a TANF recipient based on the failure of the recipient to participate in work activities if the recipient is a single custodial parent caring for a child under 6 years old, and the recipient proves that the recipient has a demonstrated inability, as determined by the Mayor, to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the recipient's home or work site is unavailable;

(2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(d) Repealed.

(e)(1) The Mayor shall not sanction a TANF recipient for failure to participate in work activities specified in an individual responsibility plan if the

Mayor provides those activities and placement in those activities is limited such that those services are not yet available to the recipient.

(2) This subsection shall not apply if the Mayor makes a placement in another activity available to the recipient, provided that the replacement activity is consistent with the terms of the recipient's individual responsibility plan.

(f) Notwithstanding subsections (c), (d), or (e) of this section, the Mayor shall sanction a TANF recipient if the recipient quits paid employment without good cause or voluntarily reduces income without good cause within 60 days before the determination of eligibility for TANF or during the period in which the recipient receives TANF.

(Apr. 6, 1982, D.C. Law 4-101, § 519e, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Mar. 3, 2010, D.C. Law 18-111, § 5171(c), 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 3-205.19e.

Effect of amendments. — D.C. Law 18-111 repealed subsec. (d), which had read as follows: "(d) The Mayor shall not sanction a TANF recipient based on the failure of the recipient to participate in work activities if a post-eligibility assessment has not been made or an individual responsibility plan has not been developed with the Mayor."

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section,

see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

For temporary (90 day) amendment of section, see § 5171(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5171(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-205.19b.

§ 4-205.19f. Sanctions.

(a) Repealed.

(b) The Mayor shall not consider an applicant or recipient to have complied with program requirements until the individual participates satisfactorily for at least one week.

(c) Notwithstanding subsection (b) of this section, if the Mayor cannot schedule the applicant or recipient for participation, by no fault of the applicant or recipient, the Mayor shall consider the applicant or recipient to have complied on the day the applicant or recipient notifies the Mayor that he or she agrees to participate.

(d) If a sanction terminates because the TANF applicant or recipient complies with program requirements, the applicant or recipient shall not receive TANF benefits for the remainder of the month of compliance, and instead shall begin receiving TANF benefits again in the following month, for

the following month, and for subsequent months so long as the recipient continues to comply and remains otherwise eligible.

(e) A TANF applicant or recipient who is aggrieved by the Mayor's action concerning a sanction may seek redress under subchapter X of this chapter. A TANF applicant or recipient who has been sanctioned shall not be entitled to a conciliation process.

(f) If a TANF recipient fails to complete his or her annual review or is otherwise terminated while under sanctions, and makes a new application for benefits, the TANF applicant shall:

(1) Undergo an assessment and orientation pursuant to § 4-205.19(b); and

(2) Shall remain under the same level of sanction until in compliance pursuant to subsection (b) of this section.

(Apr. 6, 1982, D.C. Law 4-101, § 519f, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Apr. 8, 2011, D.C. Law 18-370, § 522(d), 58 DCR 1008.)

Prior Codifications. — 1981 Ed., § 3-205.19f.

Effect of amendments. — D.C. Law 18-370 repealed subsec. (a); and added subsec. (f).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

For temporary (90 day) amendment of section, see § 522(e) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

§ 4-205.19g. Exemptions.

(a) The Mayor shall promulgate rules describing those categories of TANF applicants who are exempt from the requirements of § 4-205.19b(b) [(b) repealed]. The rules promulgated by the Mayor shall require that notice be provided to TANF applicants of the exemptions from the requirements of § 4-205.19b. Exempt TANF applicants shall include, at a minimum:

(1) Minors who are not the head of an assistance unit, including minors in payee-only cases;

(2) Individuals in a single-parent assistance unit who are already working in volunteer employment, work experience, or participating in another activity that has been approved by the Mayor as work participation, if, in the discretion of the Mayor, the participation in the activity is likely to lead to paid employment within the next 3 months, and the individual is participating in the activity for:

(A) 20 hours or more per week, or an average of 80 hours or more per month, during the period of October 1, 1997, through September 30, 1998;

(B) 25 hours or more per week, or an average of 100 hours or more per month, during the period of October 1, 1998, through September 30, 1999; or

(C) 30 hours or more per week, or an average of 120 hours or more per month, after September 30, 1999;

(3) Individuals in a two-parent assistance unit who are already working in volunteer employment, work experience, or participating in another activity that has been approved by the Mayor as work participation, if, in the discretion of the Mayor, the participation in the activity is likely to lead to paid employment within the next 3 months, and the total number of hours in which the individual and the other parent in the assistance unit are participating is at least 35 hours per week (or 55 hours per week, if the family receives federally-funded child care and no adult in the family has a disability or is caring for a child with a disability).

(4) Single custodial parents caring for a child less than 12 months old;

(5) Applicants more than 60 years old;

(6) With respect to the District-funded portion of TANF, individuals who are enrolled in local, accredited post-secondary educational institutions.

(b) The Mayor shall promulgate rules describing those categories of TANF recipients who are exempt from the requirements of § 4-205.19d(b) [(b) repealed], (c), and (d). The rules promulgated by the Mayor shall require that notice be provided to TANF recipients of the exemptions from the requirements of § 4-205.19d(b) [(b) repealed], (c), and (d). Exempt TANF recipients shall include, at a minimum:

(1) Minor who are not the heads of assistance units, including minors in payee-only cases;

(2) Single custodial parents caring for a child less than 12 months old; and

(3) Recipients more than 60 years old.

(c) Any TANF applicant or recipient who is exempt from mandatory participation in job search, job readiness, or work activities shall be permitted to participate in those activities on a voluntary basis to the extent that participation opportunities are available and the District's resources otherwise permit.

(Apr. 6, 1982, D.C. Law 4-101, § 519g, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905; Apr. 24, 2007, D.C. Law 16-305, § 14(b), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 3-205.19g.

Effect of amendments. — D.C. Law 16-305, in subsec. (a)(3), substituted “has a disability or is” for “is disabled or”.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 4-110.

§ 4-205.19h. Administration of job search, job readiness, work, and self-sufficiency activities.

(a) Subject to other applicable provisions of District law, the Mayor may contract with a nongovernmental entity to perform all or part of the operation of job search, job readiness, other work activity, or self sufficiency programs under TANF or POWER with the exception of the following:

- (1) Responsibility for final decision-making on program planning and design, including program participation requirements;
- (2) Defining who is required to participate;
- (3) Defining good cause for failure to participate;
- (4) Issuance of rules and regulations governing participation;
- (5) Defining exemptions from participation;
- (6) Determination and application of sanctions against an individual;
- (7) Providing notice of case actions; and
- (8) Performing fair hearings and administrative reviews pursuant to subchapter X of this chapter.

(b) Any nongovernmental entity with which the Mayor has contracted regarding job search, job readiness, or work activities shall not have the authority to review, change, or disapprove any administrative decision of the Mayor or otherwise substitute its judgment for that of the Mayor regarding the application of policies, rules, and regulations promulgated by the Mayor or any agency.

(c) Any adverse determination, decision, or action of the nongovernmental entity made or taken with respect to an individual shall be reviewable by the Mayor, pursuant to procedures set forth in rules promulgated by the Mayor.

(d) In selecting a nongovernmental contractor, the Mayor shall take into account past performance in providing similar services, demonstrated effectiveness, fiscal accountability, ability to meet performance standards, other factors the Mayor determines to be appropriate, and any other factors that are required to be considered by District law.

(Apr. 6, 1982, D.C. Law 4-101, § 519h, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19h.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19i. Nondiscrimination against TANF and POWER applicants and recipients.

A person's application for, or receipt of, TANF or POWER benefits shall not

affect the applicability to that person of District and federal laws prohibiting discrimination.

(Apr. 6, 1982, D.C. Law 4-101, § 519i, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19i.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19j. Health and safety standards for TANF and POWER recipients.

TANF and POWER applicants and recipients participating in job search, job readiness, work, or self-sufficiency activities shall be subject to the same health and safety standards established under District and federal laws that apply to other individuals in comparable activities who are not TANF or POWER applicants or recipients.

(Apr. 6, 1982, D.C. Law 4-101, § 519j, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19j.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19k. Workers' compensation for TANF recipients.

TANF recipients who are considered employees for purposes of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), shall be covered by Chapter 15 of Title 32 or subchapter XXIII of Chapter 6 of Title 1, whichever is appropriate, at the same level and to the same extent as comparably-employed individuals who do not receive TANF and shall be entitled to a minimum wage under § 32-1003.

(Apr. 6, 1982, D.C. Law 4-101, § 519k, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19k.

Temporary Addition of Section. — For temporary (225 day) addition of section, see

§ 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary

Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19l. Nondisplacement by TANF recipients.

(a) The Mayor shall not require a TANF recipient to participate in a work activity that:

(1) Results in the displacement of any currently-employed worker or position, including partial displacement, such as a reduction in hours of nonovertime work, wages, or employment benefits;

(2) Impairs existing contracts for services or collective bargaining agreements;

(3) Results in the employment or assignment of the TANF recipient, or the filling of a position with the TANF recipient when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with the intent of filling the vacancy so created by hiring the TANF recipient; or

(4) Results in the TANF recipient participating in community service, work experience, or subsidized employment when such participation is the equivalent of filling an established unfilled position vacancy, or is the equivalent of performing a job that is substantially similar to the vacant position, unless the TANF recipient is given a bona fide opportunity to apply for the position as an unsubsidized employee after 18 weeks of satisfactory service in the position.

(b) The Mayor shall establish and maintain a grievance procedure for resolving complaints by any person, organization, or bargaining unit that claims to have been adversely affected by a violation of this subsection.

(c) Nothing in this section shall be construed to prevent a collective bargaining agreement from containing additional protections for a regular employee.

(Apr. 6, 1982, D.C. Law 4-101, § 519l, as added Apr. 20, 1999, D.C. Law 12-241, § 2(w), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.19l.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(i) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Emergency legislation. — For temporary addition of section, see note to § 4-205.19a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.19m. Reporting requirements.

The Mayor shall report and make public the following performance measures annually:

(1) By vendor program:

(A) The number of TANF work-eligible recipients and percentage of the TANF caseload who have participated in the specific vendor program, including the number and percentage of those recipients who have:

(i) Met their work participation requirements for at least one month during the reporting period;

(ii) Completed the education or training program; and

(iii) Have become employed.

(B) Of those who gained employment, the number and percentage of TANF recipients who remain employed and met work participation requirements, by month, for up to 6 months;

(C) Of those who exited TANF due to earnings, the number and percentage of TANF recipients who return to a vendor program after 3 months, 6 months, 12 months, and 18 months;

(2) The number of TANF recipients and percentage of the TANF caseload who:

(A) Have applied for a waiver from job search or job readiness activities, as defined in § 4-205.19b, and work activities, as defined in § 4-205.19d, due to domestic violence as referenced in § 4-205.19b(d)(3);

(B) Have been granted a waiver from job search or job readiness activities, pursuant to § 4-205.19b, and work activities due to domestic violence as referenced in § 4-205.19b(d)(3);

(C) Have been referred to treatment through domestic violence services pursuant to § 4-205.19b(d)(2); and

(D) Are receiving domestic violence services through a referral by the Mayor pursuant to § 4-205.19b(d)(2);

(3) The number of TANF recipients and percentage of the TANF caseload who have been:

(A) Referred to POWER pursuant to § 4-205.73(b);

(B) Approved for POWER; and

(C) Referred to and receive, to the extent such information is accessible and available, treatment services for substance abuse or physical or mental disabilities;

(4) The number of TANF recipients and percentage of the TANF caseload who are participating in each work activity listed in § 4-205.19c(c-1), including the number of TANF recipients and percentage of TANF caseload who have reported self-employment as their unsubsidized employment work activity;

(5) For the following activities, a list of organizations, with which TANF recipients have been placed and the number placed with each:

(A) Subsidized private sector employment;

(B) Subsidized public sector employment;

(C) Work experience;

(D) On-the-job-training;

(E) Community service;
(F) Vocational education training; and
(G) Job skills training directly related to employment;
(6) The number of TANF recipients and percentage of the TANF caseload who have:

(A) Been referred to the Tuition Assistance Program Initiative for TANF ("TAPIT");

(B) Been enrolled in TAPIT; and

(C) Successfully completed TAPIT;

(7) The number of TANF recipients and percentage of the TANF caseload who have:

(A) Been referred to the University of the District of Columbia Paths Program;

(B) Been enrolled in the UDC Paths Program; and

(C) Successfully completed the UDC Paths Program; and

(8) The number of TANF recipients and percentage of the TANF caseload who were not referred to work activities within 6 months and 12 months after a positive eligibility determination.

(Apr. 20, 1999, D.C. Law 4-101, § 519m, as added Apr. 8, 2011, D.C. Law 18-366, § 2(d), 58 DCR 981.)

Legislative history of Law 18-366. — For history of Law 18-366, see notes under § 4-205.19b.

§ 4-205.19n. Family assessment plan.

Within 180 days of April 8, 2011, the Mayor shall submit to the Council a plan, with timetables and budget requirements, to assess every family and to offer supportive services and job training opportunities for the TANF program, starting with all present and subsequent families that have been on the program beyond 60 months, and to transition all families beyond 60 months from the program within 5 years.

(Apr. 20, 1999, D.C. Law 4-101, § 519n, as added Apr. 8, 2011, D.C. Law 18-366, § 2(e), 58 DCR 981.)

Legislative history of Law 18-366. — For history of Law 18-366, see notes under § 4-205.19b.

§ 4-205.20. Parental absence by reason of imprisonment.

When continued absence from the home is by reason of imprisonment, the Mayor shall verify the length of the prison term of the parent, ascertain the date the parent will be eligible for parole, determine whether the parent is employed under the Work Release Program and the amount of support payment made to the family if so employed.

(Apr. 6, 1982, D.C. Law 4-101, § 520, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.20.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.21. Eligibility standards for children of unemployed parents.

(a) Repealed.

(a-1) Repealed.

(b) Repealed.

(c) The parent who is the principal wage earner must be referred to job search, job readiness, or other work activities after application for TANF benefits.

(Apr. 6, 1982, D.C. Law 4-101, § 521, 29 DCR 1060; Oct. 27, 1995, D.C. Law 11-72, § 201(d), 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 2(x), 46 DCR 905; Dec. 17, 2009, D.C. Law 18-94, § 2(d), 56 DCR 8521.)

Prior Codifications. — 1981 Ed., § 3-205.21.

Effect of amendments. — D.C. Law 18-94 repealed subssecs. (a) and (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(x) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(x) of the Self-Sufficiency Promotion Emer-

gency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(x) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(x) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(x) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2(d) of Public Assistance Emergency Amendment Act of 2009 (D.C. Act 18-198, October 9, 2009, 56 DCR 8132).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-94. — For Law 18-94, see notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

CASE NOTES

In general.

Children of father, who was living at home and who was able-bodied and employable, were not qualified to receive assistance payments as “dependent” children under District of Colum-

bia’s AFDC program, despite father’s failure and refusal to work and support family. D.C. Code § 3-202 et seq. *Trull v. District of Columbia Dep’t of Public Welfare*, 268 A.2d 859, 1970 D.C. App. LEXIS 337 (App. 1970).

Fact that assistance payments under District of Columbia's AFDC program are not provided to a child when unemployed parent refuses to accept employment without good cause does not serve to establish that District of Columbia has failed to implement its assistance program pursuant to Social Security Act providing for aid to

dependent children of unemployed fathers under certain specified conditions. D.C. Code § 3-202 et seq.; Social Security Act, §§ 401 et seq., 407(a), 42 U.S.C. §§ 601 et seq., 607(a). *Trull v. District of Columbia Dep't of Public Welfare*, 268 A.2d 859, 1970 D.C. App. LEXIS 337 (App. 1970).

§ 4-205.22. Availability of stepparent.

(a) A stepparent is not required by the law of the District to support his or her stepchildren, but is legally responsible for the support of his or her spouse.

(b)(1) When a child lives with a parent and a stepparent, the income of the stepparent shall be considered as available to the family in computing eligibility for public assistance according to the requirements of this subsection. When the child lives with a parent and another person, not a stepparent, who is maintaining a home with the parent, the financial resources of that person shall be considered to the extent to which that person is contributing to the support of the parent and the child.

(1A) In computing the availability of a stepparent's income to an assistance unit:

(A) If the stepparent is included in the assistance unit, and has at least one child in common with another member of the assistance unit, and that child is part of the assistance unit, the family shall be considered to be a two-parent assistance unit and the stepparent's income shall be treated like a parent's income;

(B) If the stepparent is included in the assistance unit, but does not have a child in common with another member of the assistance unit, the stepparent shall be treated as the parent of the dependent child in the assistance unit; and

(C) If the stepparent is not included in the assistance unit, none of the stepparent's income shall be considered available to the assistance unit.

(2) In computing the availability of a deemed parent's income, the Department shall exclude:

(A) The first \$90 of the total of the deemed parent's earned income for the month;

(B) An additional amount for the support of the deemed parent and any other individuals who are living in the home, but whose needs are not taken into account in making the TANF eligibility determination and who are claimed by the deemed parent as dependents for purposes of determining his or her federal personal income tax liability. This disregarded amount shall equal the District's standard of assistance for a family group of the same composition as the deemed parent and those other individuals described in the preceding sentence; and

(C) Repealed.

(D) Payments by such deemed parent of alimony or child support with respect to individuals not living in the household.

(3) Repealed.

(4) Repealed.

(c) Repealed.

(d) For purposes of this section, a “deemed parent” is:

(1) The natural or adoptive parent of a minor dependent child, if the child is his- or herself the parent of a dependent child, and all three generations live in the same household; or

(2) The parent of a minor dependent child, if the parent lives in the same household with the dependent child and marries a person who is not the parent of the dependent child, and chooses to be excluded from the dependent child’s assistance unit.

(Apr. 6, 1982, D.C. Law 4-101, § 523, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(y), 46 DCR 905; Dec. 17, 2009, D.C. Law 18-94, § 2(e), 56 DCR 8521.)

Section references. — This section is referred to in §§ 4-205.10 and 4-205.11.

Prior Codifications. — 1981 Ed., § 3-205.22.

Effect of amendments. — D.C. Law 12-241 in (b), added (1A), substituted “deemed parent” for “stepparent” and “deemed parent’s” for “stepparent’s” throughout (2), in (2)(B), substituted “TANF” for “AFDC” and “standard of assistance” for “standard of need”, and repealed (3) and (4); repealed (c); and added (d).

D.C. Law 18-94 rewrote subsec. (b)(2)(A); in subsec. (b)(2)(B), inserted “and” at the end; repealed subsec. (b)(2)(C); and, in subsec. (d)(2), substituted “who is not the parent of the dependent child, and chooses to be excluded from the dependent child’s assistance unit” for “with whom the parent does not have a child in common”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(y) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997

(D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(y) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(y) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(y) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(y) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2(e) of Public Assistance Emergency Amendment Act of 2009 (D.C. Act 18-198, October 9, 2009, 56 DCR 8132).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-94. — For Law 18-94, see notes following § 4-201.01.

§ 4-205.23. Obligations of custodial relatives other than parents.

(a) When a relative applies for TANF in behalf of a child who is living in such relative’s home and the child’s parents are maintaining a home else-

where, the Mayor shall determine whether the child is in fact deprived of parental care and support.

(b) When parents are unwilling to accept the responsibility for the support of their children, a relative with whom a child is living shall be encouraged to cooperate with appropriate law enforcement officials charged with the responsibility for pursuing public remedies against the parents who are not contributing toward the support of their family; provided, that the failure of such relative to so cooperate with law enforcement officials shall have no effect on eligibility for assistance under this program.

(Apr. 6, 1982, D.C. Law 4-101, § 523, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(z), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.23.

Effect of amendments. — D.C. Law 12-241 substituted "TANF" for "AFDC" in (a).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(z) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(z) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(z) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(z) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(z) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.24. Eligibility requirements for alien children.

(a) Any person who is not a citizen of the United States, who entered the United States before August 22, 1996, and who is a "qualified alien", as defined by § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2105; 8 U.S.C. § 1641), may receive the following:

- (1) TANF benefits, if otherwise eligible under this chapter;
- (2) Medicaid benefits, if otherwise eligible under the District of Columbia State Plan submitted pursuant to title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.); and
- (3) Benefits and services funded under title XX of the Social Security Act, approved August 13, 1981 (95 Stat. 867; 42 U.S.C. § 1397 et seq.), if otherwise eligible under applicable federal and District law.

(b) Any person who is not a citizen of the United States and who is a

“qualified alien”, as defined by § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, may receive any District-funded benefit if otherwise eligible under applicable District law, regardless of the person’s date of entry into the United States.

(Apr. 6, 1982, D.C. Law 4-101, § 524, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(aa), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.24.

Effect of amendments. — D.C. Law 12-241 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(j) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(j) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(aa) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(j) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(j) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(j) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(aa) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(aa) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(aa) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(aa) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.25. Eligibility determined prospectively.

All factors of TANF eligibility shall be determined prospectively. The amount of monthly TANF assistance payments shall be determined using the prospective budgeting method.

(Apr. 6, 1982, D.C. Law 4-101, § 524, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(e), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(f); Apr. 20, 1999, D.C. Law 12-241, § 2(bb), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.25.

Effect of amendments. — D.C. Law 12-241 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of sec-

tion, see § 2(bb) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(bb) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(bb) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(bb) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(bb) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following to § 4-201.01.

§ 4-205.26. Procedure for public and medical assistance application.

Applications for public and medical assistance shall be approved or disapproved by the Mayor with reasonable promptness. Such action shall be taken on applications for public assistance not in excess of 45 days and on applications for medical assistance to people with disabilities not in excess of 60 days from the date the application is received to the date the applicant receives his 1st assistance payment or his Medicaid care or a notice of ineligibility, unless a delay is caused by unusual circumstance beyond the Mayor's control including those which are:

- (1) Wholly within the applicant's control;
- (2) Beyond his or her control, such as hospitalization or imprisonment; or
- (3) An administrative or other emergency that could not be reasonably controlled by the agency.

(Apr. 6, 1982, D.C. Law 4-101, § 526, 29 DCR 1060; Apr. 24, 2007, D.C. Law 16-305, § 13(b), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 3-205.26.

Effect of amendments. — D.C. Law 16-305 substituted "peoples with disabilities" for "the disabled".

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 4-110.

CASE NOTES

ANALYSIS

Jurisdiction.

Timeliness of processing.

Jurisdiction.

District court would exercise supplemental jurisdiction over claim that denial of Medicaid benefits violated District of Columbia statutes. D.C. Code 1981, §§ 3-205.26, 3-205.55; 18 U.S.C. § 1367. *Wellington v. District of Colum-*

bia, 851 F. Supp. 1, 1994 U.S. Dist. LEXIS 4508 (1994).

Timeliness of processing.

Failure of plaintiffs' study to include denied applications for Medicaid merely rendered analysis less probative than it otherwise would be and did not render study inadmissible in suit challenging timeliness of processing of Medicaid applications; court had no reason to assume that applications resulting in denial were pro-

cessed more quickly than applications resulting in finding of eligibility and that defendants were prejudiced by exclusion of applications from the study. Social Security Act, § 1902(a)(8), as amended, 42 U.S.C. § 1396a(a)(8); D.C. Code 1981, § 3-205.26; 42 C.F.R. § 435.911(a). *Salazar v. District of Columbia*, 954 F. Supp. 278, 1996 U.S. Dist. LEXIS 15317 (1996), amended by 938 F. Supp. 926 (D.D.C. 1996).

Failure to process Medicaid applications within 45 days for applicants who did not seek benefits on basis of foster care or disability and qualified through District of Columbia Non-Public Assistance (NPA) Program was substantial and resulted from course deliberately pursued by official policymakers, and, thus, District and its officials could be held liable under § 1983, even though Income Maintenance

Administration (IMA) had undertaken initiatives to improve application processing in multinational section; reports by IMA demonstrated delays for over 45 days for 60% of pending applications in one group and 54% of applications in another group at end of 1993, during later period, average monthly percentages of applications pending for more than 45 days were still 19.8% and 10.6%, and random sample indicated failure to meet deadline approximately 36% of the time and 58% of the time. Social Security Act, § 1902(a)(8), as amended, 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1983; D.C. Code 1981, § 3-205.26; 42 C.F.R. § 435.911(a). *Salazar v. District of Columbia*, 954 F. Supp. 278, 1996 U.S. Dist. LEXIS 15317 (1996), amended by 938 F. Supp. 926 (D.D.C. 1996).

§ 4-205.27. Failure to determine eligibility within time requirement.

The Mayor shall not terminate his consideration of an application for assistance solely because he has been unable to establish the eligibility of the applicant within the 45- or 60-day period.

(Apr. 6, 1982, D.C. Law 4-101, § 527, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.27.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.28. Income application in determining need for family receiving more than 1 assistance payment.

When a family is receiving more than 1 assistance payment and members of a family have income, the Mayor shall apply income that must be considered in determining need as follows:

(1) When a husband and wife are each receiving assistance, income shall be divided equally between them.

(2) When the parent of minor children has income and is receiving assistance in his or her own right, his or her income shall be prorated between his or her payment and the payment for his or her dependents.

(3) When an adult child has income, is receiving assistance, and is living with his or her family which is receiving assistance, his or her income shall be applied only to his or her own requirements.

(Apr. 6, 1982, D.C. Law 4-101, § 528, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.28.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.29. Income status of loans and grants.

The Mayor, in determining the amount of assistance payment to which an applicant or recipient of public welfare is entitled, shall not consider as income or as a resource loans and grants obtained and used under conditions that preclude their use for current living costs.

(Apr. 6, 1982, D.C. Law 4-101, § 529, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.29. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

CASE NOTES

Federal education funds.

Though refusal of public assistance recipient to comply with statutory reporting requirements regarding his receipt of federal educational financial assistance appeared to justify termination of the public assistance under District of Columbia statute, recipient's pro se status, coupled with uncertainty as to permitted uses of the federal educational funds, warranted remand for limited purpose of calculat-

ing precise amount of public assistance which should be deducted because of the federal assistance received under room and board category. D.C. Code 1981, §§ 3-204.1, 3-205.8, 3-205.13, 3-205.13(3), 3-205.29, 3-205.31 to 3-205.57, 3-210.1; Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq. *Cruz v. District of Columbia Dep't of Human Services*, 479 A.2d 333, 1984 D.C. App. LEXIS 465 (1984).

§ 4-205.30. Definitions.

As used in §§ 4-205.31 through 4-205.35, the term:

(1) Repealed.

(2) "Lump-sum payment or settlement" means a nonrecurring earned or unearned income, including retroactive monthly benefits, and payments in the nature of a windfall. The phrase "lump-sum payment or settlement" does not include income that represents a correction of previous underpayments of TANF, POWER, Aid to Families with Dependent Children (representing payments owed before that program was repealed) or GAC, and does not include a personal injury award, worker's compensation, or similar award to the extent that it is earmarked and used for the purpose for which it was paid, such as payment of medical bills.

(Apr. 6, 1982, D.C. Law 4-101, § 530, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(cc), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.30.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(cc) of Self-Sufficiency Promotion

Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(cc) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(cc) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(cc) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998

(D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(cc) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.31. Application for benefits required.

(a) Subject to the provisions of subsection (b) of this section, the Mayor shall, as a condition of eligibility, require each public assistance applicant or recipient to apply for any benefits to which he or she may be eligible.

(b) If a person applies for TANF and the Mayor determines that the applicant faces significant barriers to employment due to a physical or mental incapacity, the Mayor may consider the application to be an application for POWER, and may process the application as an application for POWER. A person may not apply for POWER without Mayoral approval.

(Apr. 6, 1982, D.C. Law 4-101, § 531, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(dd), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.31.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(dd) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(dd) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(dd) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(dd) of the Self-Suffi-

ciency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(dd) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.32. Establishment of net payment received.

The Mayor shall deduct from the gross amount of any accrued statutory benefit, lump-sum payment, or settlement from any source received by a recipient of GPA (provided such money is still available to the recipient when the Mayor learns of its receipt):

(1) Attorneys' fees, medical expense, and other legitimate expenses of collection or settlement; and

(2) Legitimate debts of the recipient incurred for living expenses prior to his or her application for assistance and for which credit was extended in anticipation of the award or settlement.

(Apr. 6, 1982, D.C. Law 4-101, § 532, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.32. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

§ 4-205.33. Treatment of lump-sum payments and settlements.

(a) Repealed.

(b) For applicants for and recipients of TANF:

(1) The amount of a lump-sum payment or settlement shall be considered as current income of the applicant or recipient, both in the month in which it was received and, to the extent required by paragraph (2) of this subsection, in future months, irrespective of the month in which it was reported to the Mayor.

(2) If the amount of the payment, when added to any other income, exceeds the standard of assistance applicable to the family of which the applicant or recipient is a member:

(A) The family of the applicant or recipient shall be ineligible for assistance for the full number of months that equals:

(i) The sum of the payment and all other countable income received in such month, divided by;

(ii) The standard of assistance applicable to such family; and

(B) Any income remaining (which amount is less than the applicable monthly standard) shall be treated as if it were income received in the 1st month following the period of ineligibility specified in subparagraph (A) of this paragraph.

(3) The period of ineligibility described in paragraph (2) of this subsection shall be shortened if: (A) An applicant reapplies and it is determined that the standards of assistance have been increased and the amount the assistance unit would have received has also changed; (B) the lump-sum payment or a portion of it has become unavailable to the assistance unit for a reason beyond the control of the assistance unit; or (C) a member of the assistance unit incurred and paid for medical expenses in a month during the period of ineligibility caused by receipt of a lump-sum payment. The Mayor shall establish guidelines for determining when the circumstances of an assistance unit fall within the purview of this paragraph.

(Apr. 6, 1982, D.C. Law 4-101, § 533, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(f), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(g), 32 DCR 3778; Mar. 20, 1998, D.C. Law 12-60, § 701(i), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(ee), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.33.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(i) of General Public Assistance

Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(i) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of sec-

tion, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(ee) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(i) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(i) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(i) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(ee) of the Self-Sufficiency Promotion Emer-

gency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ee) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ee) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ee) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.34. Treatment of accrued statutory benefits. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 534, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(j), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 3-205.34.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(j) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) repeal of section, see § 2(j) of Fiscal Year 1998 Revised Budget Sup-

port Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.35. Failure of recipients to report promptly. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 535, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ff), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.35.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(ff) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(ff) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ff) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ff) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ff) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.36. Work incentive allowances disregarded.

The Mayor, in determining the extent of need of persons who are receiving TANF and are selected by the vocational rehabilitation program to receive vocational training for gainful employment, shall disregard the full amount of work incentive allowances paid to trainees by the vocational rehabilitation program.

(Apr. 6, 1982, D.C. Law 4-101, § 536, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(k), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(gg), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.36.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(k) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(k) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(gg) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR

1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(k) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(k) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(k) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(gg) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(gg) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(gg) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998

(D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(gg) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For

legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.37. Standard for income and resource determination.

(a) The Mayor shall, in establishing the need of an individual for assistance, take into consideration all income and resources of such individual in excess of any amounts which may, under the provisions of this chapter, be legally disregarded.

(b) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 537, 29 DCR 1060; Oct. 27, 1995, D.C. Law 11-72, § 201(e), 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 2(hh), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.37.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(k) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(k) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(hh) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(k) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(k) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(k) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(hh) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(hh) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(hh) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(hh) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.38. Availability of income and resources.

All income and other resources shall be identifiable as to nature, amount, and time of receipt, and must be actually available to the applicant or recipient

for his or her current use. Unpredictable and inconsequential gifts or earnings shall not be considered resources.

(Apr. 6, 1982, D.C. Law 4-101, § 538, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.38. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-

Legislative history of Law 4-101. — For 201.01.

§ 4-205.39. Earned income.

Earned income includes income or resources in cash or in kind earned by an individual through the receipt of wages, salaries, commissions, or profit from activities in which he or she is self-employed.

(Apr. 6, 1982, D.C. Law 4-101, § 539, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.39. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-

Legislative history of Law 4-101. — For 201.01.

§ 4-205.40. Resources in kind.

(a) Resources in kind are basic necessities, such as food, clothing, or shelter, which an individual obtains without charge or in return for his or her services.

(1) Repealed.

(2) Home produce of an applicant or recipient, utilized by him or her and his or her household for their own consumption, shall not be considered in determining need and the amount of payment.

(b) An individual shall not be required to accept an offer of a free home.

(Apr. 6, 1982, D.C. Law 4-101, § 540, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ii), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.40.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(ii) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(ii) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ii) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ii) of the Self-Suffi-

ciency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ii) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.41. Emergency applicant may retain automobile.

An applicant for public assistance who requests assistance by reason of an emergency for not more than 60 days shall be entitled to retain whatever automobile is then owned or being paid for by him or her.

(Apr. 6, 1982, D.C. Law 4-101, § 541, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.41. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

201.01.

§ 4-205.42. Definitions relating to incapacity and disability.

For the purpose of determining coverage and conditions of eligibility of applicants and recipients in financial and medical assistance programs of the District, the Mayor shall apply the following definitions relating to incapacity and disability with respect to parents and other adults who are otherwise eligible for assistance under such programs:

(1) *Physical or mental incapacity.* —

(A) For the TANF program, physical or mental incapacity shall be deemed to exist when 1 parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for an otherwise eligible child and be expected to last for a period of at least 30 days.

(B) Repealed.

(C) In making the determination of ability to support, the Mayor shall take into account the limited employment opportunities of individuals with disabilities.

(D) A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, shall be deemed acceptable proof of incapacity for purposes of the TANF program.

(2) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 542, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(e), 38 DCR 4205; Mar. 20, 1998, D.C. Law 12-60, § 701(l), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(jj), 46 DCR 905; Apr. 24, 2007, D.C. Law 16-305, § 13(c), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 3-205.42.

Effect of amendments. — D.C. Law 16-305, in par. (1)(C), substituted "individuals with disabilities" for "handicapped individuals".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(e) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(l) of General Public Assistance Program Termination Temporary Amendment

Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(l) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(jj) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(e) of the Om-

nibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(e) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).⁴

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(l) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(l) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(l) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(jj) of the Self-Sufficiency Promotion Emer-

gency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(jj) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(jj) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(jj) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 4-110.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

CASE NOTES

Due process.

Recipients of general public assistance benefits on effective date of statutory amendment who, upon expiration of their current certification periods, were found not "disabled" under statutorily amended benefits eligibility criteria, did not, for due process purposes, have property interest in, and constitutional right to, continuation of such benefits pending administrative fair hearing by virtue of Department of Human Services' (DHS) process of implementing statutory amendment; neither Department's process

of sending each recipient notice of pending expiration of certification period and forms for reapplication nor forms themselves created any legitimate expectation other than that reapplication would be acted upon by medical review team. U.S. Const. Amend. 5; D.C. Code 1981, §§ 3-205.42(2), 3-205.42a(b), 3-205.53(c). *Barry v. Little*, 669 A.2d 115, 1995 D.C. App. LEXIS 250 (1995), writ of certiorari denied by 519 U.S. 1108, 117 S. Ct. 942, 136 L. Ed. 2d 832, 1997 U.S. LEXIS 698, 65 U.S.L.W. 3567 (1997).

§ 4-205.42a. Eligibility for General Public Assistance. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 542a, as added Aug. 17, 1991, D.C. Law 9-19, title I, § 101(f), 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-27, § 2(f), 38 DCR 4205; Feb. 5, 1994, D.C. Law 10-68, § 10(d), 40 DCR 6311; Mar. 20, 1998, D.C. Law 12-60, § 701(m), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 3-205.42a.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see

§ 2(m) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) repeal of section, see § 701(m) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.43. Participation in labor dispute; pregnancy.

(a) Repealed.

(b) A pregnant woman may be eligible for TANF benefits for herself if the pregnancy has been medically certified, the pregnancy is in the third trimester, and other eligibility requirements are met. The Mayor may provide to the pregnant woman written information and referral as to the availability of prenatal care services and nutrition supplements for pregnant women.

(Apr. 6, 1982, D.C. Law 4-101, § 543, 29 DCR 1060; Sept. 26, 1996, D.C. Law 11-52, § 502(d), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 2(kk), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.43.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 502(d) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2(a) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(kk) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 502(d) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 2(a) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 2(a) of the Human Services Spending Reduc-

tion Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 502(d) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and see § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(kk) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(kk) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(kk) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(kk) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.44. Amount. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 544, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ll), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.44.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(l) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) repeal of section, see § 2(ll) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of § 4-205.44 through 4-205.46, see § 2(ll)-(nn) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ll)-

(nn) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ll)-(nn) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ll)-(nn) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.45. Standard for requirements exceptions. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 545, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(mm), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.45.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(mm) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.44.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.46. Meal standard. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 546, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(nn), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.46.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(nn) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.44.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.47. Nursing care standard.

(a) When a recipient is receiving nursing care in the home of a relative, the Mayor will apply the standard for room, board, and care in an intermediate care facility, based on the kind and extent of care required.

(b) The rate for care in a foster home or for residential placement shall be the same as that for the lowest rate in an intermediate care facility.

(c) The rates paid for intermediate care, foster home care, or residential placement shall be paid at 100% of the standard as the rates were not increased in the 1970 budget.

(Apr. 6, 1982, D.C. Law 4-101, § 547, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.47. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

§ 4-205.48. Standards of assistance adopted and applied.

Standards of assistance are adopted superseding the existing standards for requirements, and shall be applied:

(1) To determine the eligibility of applicants for public assistance; and

(2) To determine or redetermine the amount of public assistance grant for the recipient.

(Apr. 6, 1982, D.C. Law 4-101, § 548, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.48. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

§ 4-205.49. Special living arrangements.

(a) Recipients of public assistance who are in nursing homes shall receive a payment of \$40 per month for clothing and personal needs.

(b) Recipients of public assistance who are in half-way houses for alcoholics or drug addicts shall receive a payment of \$170 per month, \$150 of which shall be for room, board, and care, and the remaining \$20 for clothing and personal needs.

(c) Effective with payments beginning on January 1, 1997, each recipient of Supplemental Security Income or General Public Assistance who lives in a community residence facility that has 50 or fewer residents or an Assisted Living Residence that has 16 or fewer residents shall receive a payment of \$631.20 per month, of which \$561.20 shall be used for room, board, and care and \$70.00 shall be retained by the recipient for clothing and personal needs.

(d) Effective with payments beginning on January 1, 1997, each recipient of Supplemental Security Income who lives in a community residence facility that has a capacity for more than 50 residents or an Assisted Living Residence that has 17 or more residents shall receive a payment of \$741.20 per month, of which \$671.20 shall be used for room, board, and care and \$70.00 shall be retained by the recipient for clothing and personal needs. At no time shall the

total number of persons receiving payments from the District pursuant to this subsection exceed 250 persons.

(e) In the event the SSI payment is increased on or after January 1, 1997, the total amount of any increase shall be added to the payment levels authorized by subsections (c) and (d) of this section and shall be used for room, board, and care. The Mayor may increase the payments for clothing and personal needs authorized by subsections (c) and (d) of this section through rulemaking pursuant to subsection (g) of this section.

(e-1)(1) Each District of Columbia resident who receives a Supplemental Security Income payment pursuant to this section and who lives in a community residence facility or an Assisted Living Residence shall receive an additional supplemental payment for room, board, and care.

(2) The additional supplemental payment shall be prorated based upon the amount of supplemental funds forwarded by the District to the federal Social Security Administration divided by the total population of Supplemental Security Income recipients who are residents of the District of Columbia and who live in a community residence facility or an Assisted Living Residence.

(3) This subsection shall apply on the later of the following:

(A) The date of written notice by the District to the federal government that the District intends to eliminate payments to noninstitutionalized SSI recipients;

(B) The date the Social Security Administration provides notice to noninstitutionalized SSI recipients whose supplemental payments are being eliminated; or

(C) January 1, 1997.

(f)(1) For the purposes of this section the term "Assisted Living Residence" shall have the same meaning as given the term in § 44-102.01(4).

(2) For the purposes of this section, the terms "nursing home" and "community residence facility" mean those terms as they are defined in § 44-501(a)(3) and (4).

(g) The Mayor may, pursuant to subchapter I of Chapter 5 of Title 2, set payment levels higher than those established by this section and, with respect to community residence facilities and Assisted Living Residences, vary payment levels according to subtypes different from, or in addition to, those recognized by subsections (c) and (d) of this section.

(h) The Mayor may enter into an agreement with the Secretary of the Department of Health and Human Services for the federal administration of supplemental payments. Payments made pursuant to this section shall be made as long as such payments are required by federal law.

(Apr. 6, 1982, D.C. Law 4-101, § 549, 29 DCR 1060; Mar. 10, 1983, D.C. Law 4-208, § 2(b), 30 DCR 202; June 25, 1986, D.C. Law 6-124, § 2(a), 33 DCR 2940; Feb. 27, 1998, D.C. Law 12-53, § 2(b), 44 DCR 6228; Mar. 20, 1998, D.C. Law 12-60, § 701(n), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-264, § 14, 46 DCR 2118; June 24, 2000, D.C. Law 13-127, § 1401, 47 DCR 2647.)

Prior Codifications. — 1981 Ed., § 3-205.49.

Effect of amendments. — D.C. Law 13-127, in subsec. (c), added "or an Assisted Living

Residence that has 16 or fewer residents" after "50 or fewer residents"; in subsec. (d) added "or an Assisted Living Residence that has 17 or more residents" after "50 or fewer residents"; in pars. (e-1)(1) and (2) added "or an Assisted Living Residence" after "community residence facility"; in subsec. (f) added a new sentence at the end, which reads "For the purposes of this section the term 'Assisted Living Residence' shall have the same meaning as given the term in section 201(4) of the Assisted Living Residence Act of 2000, Bill 13-107, passed by the Council on second reading February 1, 2000."; and, in subsec. (g) added "and Assisted Living Residences" after the phrase "community residence facilities".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Supplemental Security Income Payment Temporary Amendment Act of 1996 (D.C. Law 11-264, April 25, 1997, law notification 44 DCR 2862).

For temporary (225 day) amendment of section, see § 2(n), (o) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 2(o) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Supplemental Security Income Payment Emergency Amendment Act of 1996 (D.C. Act 11-488, January 2, 1997, 44 DCR 659), see § 2(b) of the Supplemental Security Income Payment Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-43, March 31, 1997, 44 DCR 2093), and see § 2(b) of the Supplemental Security Income Payment Second Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-202, December 2, 1997, 44 DCR 7495).

For temporary amendment of section, see § 2(n) and (o) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(n) and (o) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(n) and (o) of the Fiscal Year 1998 Revised Budget Support Congressional Review

Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-208. — For legislative history of D.C. Law 4-208, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 6-124. — Law 6-124, the "Public Assistance Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-339, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 25, 1986, and April 15, 1986, respectively. Signed by the Mayor on May 2, 1986, it was assigned Act No. 6-160 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-53. — For legislative history of D.C. Law 12-53, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-127. — Law 13-127, the "Assisted Living Residence Regulatory Act of 2000," was introduced in Council and assigned Bill No. 13-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000.

Delegation of Authority. — Delegation of Authority Pursuant to the District of Columbia Public Assistance Act of 1982, see Mayor's Order 2006-50, April 13,

Editor's notes. — Repeal of § 701(n) of Law 12-60: Section 14 of D.C. Law 12-264 provided that § 701(n) of the Fiscal Year 1998 Revised Budget Support Act of 1997, effective March 20, 1998 (D.C. Law 12-60; D.C. Code § 4-205.49(c)), is repealed.

§ 4-205.50. Costs of training and employment.

(a)—(d) Repealed.

(e) At the discretion of the Mayor and subject to annual appropriations, the Mayor may:

(1) Provide supportive services necessary for a member of an assistance unit to participate in or prepare for a mandatory job search, job readiness, or other work activity under TANF or a mandatory self-sufficiency activity under POWER; and

(2) Provide reimbursement for a recipient's expenses directly related to participation in a mandatory work activity under TANF or a mandatory self-sufficiency activity under POWER.

(Apr. 6, 1982, D.C. Law 4-101, § 550, 29 DCR 1060; Sept. 10, 1985, D.C. Law 6-35, § 2(h), 32 DCR 3778; June 25, 1986, D.C. Law 6-124, § 2(b), 33 DCR 2940; June 22, 1990, D.C. Law 8-144, § 2, 37 DCR 2974; Mar. 6, 1991, D.C. Law 8-202, § 2, 37 DCR 7937; Mar. 20, 1998, D.C. Law 12-60, § 701(p), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(ii), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.50.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(m) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(p) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(p) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(m) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(o) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(m) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(m) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(p) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(p) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(p) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emer-

gency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(m) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(o) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(o) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(o) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(o) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-201.05.

Legislative history of Law 6-124. — For legislative history of D.C. Law 6-124, see Historical and Statutory Notes following § 4-205.49.

Legislative history of Law 6-124. — For legislative history of D.C. Law 6-124, see Historical and Statutory Notes following § 3-205.49.

Legislative history of Law 8-144. — Law 8-144, the "District of Columbia Family Support Act Federal Conformity Amendment Temporary Act of 1990," was introduced in Council and assigned Bill No. 8-543. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-202. — Law 8-202, the “District of Columbia Family Support Act Federal Conformity Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-541, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 23, 1990, and November 13, 1990, respectively. Signed by the Mayor on November 30, 1990, it was assigned Act No. 8-268 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor’s notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.51. Denial of monthly benefits.

No assistance unit will receive TANF monthly benefits if the benefit check prior to adjustments is less than \$10. An assistance unit denied benefits as a result of this provision shall continue to be considered eligible for TANF for all other purposes.

(Apr. 6, 1982, D.C. Law 4-101, § 551, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(pp), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.51.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(pp) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(pp) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(pp) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(pp) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(pp) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) addition of section, see § 522(f) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.51a. TANF Universal Service Delivery Model.

(a) By no later than September 30, 2011, the Mayor shall have adopted and fully implemented the TANF Universal Service Delivery Model, as created by the Department of Human Services, which shall:

(1) Address customer needs based on personal and family circumstances, to the extent feasible;

(2) Require orientation and a detailed assessment and referral to an appropriate array of services and supports, which shall be provided through:

- (A) Contract job placement;
- (B) Education and training vendors, and
- (C) District agencies;

(3) Emphasize education, training, and skills enhancement;

(4) Assist customers in addressing and overcoming challenges that are barriers to employment;

(5) Include financial disincentives to customers who without good cause remain unemployed;

(6) Provide for participation with the TEP program;

(7) Provide for an Individual Responsibility Plan for each customer; and

(8) Include a system of sanctions for a customer who fails to participate or complete an Individual Responsibility Plan.

(b) A nonexempt customer who fails to participate or complete an Individual Responsibility Plan shall be subject to a progressive, graduated sanction policy, as established by the Department of Human Services. Each level of sanctions shall reduce further the maximum grant a customer will be eligible to receive.

(c) The Mayor shall submit a draft plan of the TANF Universal Service Delivery Model to the Council for its review by March 1, 2011.

(Apr. 6, 1982, D.C. Law 4-101, § 551a, as added Apr. 8, 2011, D.C. Law 18-370, § 522(e), 58 DCR 1008.)

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

Editor's notes. — Former § 4-205.51a has been recodified as § 4-205.51b.

§ 4-205.51b. Annual comparative review.

(a) *In general.* — The Council of the District of Columbia shall annually review and adjust the amount of the monthly assistance payment that may be made under the Temporary Assistance for Needy Families Program so that such payment is comparable with the monthly assistance payments made under such program in Maryland and Virginia counties that are contiguous to the District of Columbia.

(b) *Effective date.* — Subsection (a) shall apply with respect to fiscal year 1998 and each succeeding fiscal year.

(Nov. 19, 1997, 111 Stat. 2185, Pub. L. 105-100, § 153)

Prior Codifications. — 2001 Ed., § 4-205.51a 1981 Ed., § 3-205.51a.

§ 4-205.52. Determination of amount of public assistance payments for assistance unit; standards of assistance enumerated.

(a) To determine the TANF, POWER or GAC payment for an assistance unit, the Mayor shall subtract any income of the assistance unit, after applicable

disregards, from the current payment level for a family that is the size of the assistance unit.

(b) Repealed.

(c) The standards of assistance are set forth in the following table and include a portion of basic costs of food, clothing, shelter, household and personal items, and certain transportation costs:

STANDARDS OF ASSISTANCE		
Family Size	Standard of Assistance	Payment Level
1	\$ 450.00	\$ 239.00
2	560.00	298.00
3	712.00	379.00
4	870.00	463.00
5	1,002.00	533.00
6	1,178.00	627.00
7	1,352.00	719.00
8	1,494.00	795.00
9	1,642.00	874.00
10	1,786.00	950.00
11	1,884.00	1,002.00
12	2,024.00	1,077.00
13	2,116.00	1,126.00
14	2,232.00	1,187.00
15	2,316.00	1,232.00
16	2,432.00	1,294.00
17	2,668.00	1,419.00
18	2,730.00	1,452.00
19	2,786.00	1,482.00

(c-1) Repealed.

(c-2) The level of public assistance payment for assistance units subject to § 4-205.11b shall be equal to the current payment level for the assistance unit, established by subsection (d) of this section, less 20% after February 1, 2011.

(c-3) In addition to the reduction set forth in subsection (c-2) of this section, the following adjustments shall be made to the level of public assistance payment for assistance units subject to § 4-205.11b:

(1) For fiscal year 2013, a reduction of 25% of the fiscal year 2012 amount;

(2) For fiscal year 2014, a reduction of 41.7% of the fiscal year 2013 amount; and

(3) For fiscal year 2015 and thereafter, no benefits shall be provided.

(d) The table set forth in subsection (c) of this section shall apply to payments made after January 31, 1998. The level of public assistance payments for assistance units and the standards of assistance in subsection (c) of this section may be adjusted by the Mayor through promulgation of a rule in accordance with the rulemaking provisions of subchapter I of Chapter 5 of Title 2.

(e) A recipient of public assistance may not make a claim for any cost-of-

living adjustment in assistance payments that have not been paid prior to December 29, 1994, and would have been paid but for the enactment of the Public Assistance Act of 1982 Budget Conformity Amendment Act of 1991, effective August 17, 1991 (D.C. Law 9-27; 38 DCR 5794).

(f) A recipient of public assistance may not make a claim for any adjustment in assistance payments that have not been paid prior to December 29, 1994, and would have been paid but for the enactment of the Public Assistance Act of 1982 Budget Conformity Amendment Act of 1991, effective August 17, 1991 (D.C. Law 9-27; 38 DCR 5794).

(Apr. 6, 1982, D.C. Law 4-101, § 552, 29 DCR 1060; May 19, 1982, D.C. Law 4-108, § 3, 29 DCR 1413; Aug. 10, 1984, D.C. Law 5-100, § 2, 31 DCR 2896; Apr. 11, 1986, D.C. Law 6-106, § 2, 33 DCR 1165; June 25, 1986, D.C. Law 6-124, § 2(c), 33 DCR 2940; Mar. 11, 1988, D.C. Law 7-86, § 2(a), 35 DCR 140; Aug. 17, 1991, D.C. Law 9-27, § 2(g), 38 DCR 4205; Sept. 26, 1995, D.C. Law 11-52, § 502(e), 42 DCR 3684; Oct. 27, 1995, D.C. Law 11-72, § 201(f), 42 DCR 4728; Apr. 18, 1996, D.C. Law 11-110, § 9(b), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-199, § 302, 43 DCR 4569; Aug. 1, 1996, D.C. Law 11-152, § 101(a), 43 DCR 2978; Apr. 9, 1997, D.C. Law 11-198, § 302, 43 DCR 4569; Apr. 20, 1999, D.C. Law 12-241, § 2(qq), 46 DCR 905; Apr. 8, 2011, D.C. Law 18-370, § 522(f), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 5022, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 3-205.52.

Effect of amendments. — D.C. Law 18-370 added subsec. (c-2).

D.C. Law 19-21 added subsec. (c-3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(g) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2 of Public Assistance and Day Care Policy Temporary Amendment Act of 1994 (D.C. Law 10-208, March 14, 1995, law notification 42 DCR 1568).

For temporary (225 day) amendment of section, see § 502(e) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2(b) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Section 507 of D.C. Law 11-52 repealed D.C. Law 10-208.

For temporary repeal of the Public Assistance and Day Care Policy Temporary Amendment Act of 1994, enacted November 22, 1994, enacted November 22, 1994, see § 507 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (225 day) amendment of section, see § 302 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 2(n), (x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(n), (x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(qq) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(g) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(g) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2 of the Public Assistance and Day Care Policy Emergency Amendment Act of 1994 (D.C. Act 10-326, October 21, 1994, 41 DCR 7153).

For temporary amendment of section, see § 502(e) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 2(b) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 2(b) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 502(e) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 101 of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412).

For temporary amendment of section, see § 2(a) of the Emergency and Public Assistance Emergency Amendment Act of 1996 (D.C. Act 11-277, May 29, 1996, 43 DCR 2971).

For temporary repeal of § 101 and 102 of the Fiscal Year 1996 Budget Support Emergency Act of 1996, effective April 26, 1996 (D.C. Act 11-264), see § 4 of the Emergency and Public Assistance Emergency Amendment Act of 1996 (D.C. Act 11-277, May 29, 1996, 43 DCR 2971).

For temporary amendment of section, see § 302 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), and § 302 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary amendment of section, see § 101(a) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

For temporary amendment of section, see § 302 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 302 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary amendment of section, see § 2 of the Public Assistance Reduction Emergency Amendment Act of 1996 (D.C. Act 11-492, January 8, 1997, 44 DCR 763).

For temporary amendment of section, see § 2(n) and (x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(n) and (x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(n) and (x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(qq) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(qq) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(qq) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(qq) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 522(c) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-108. — Law 4-108, the "District of Columbia Administration of Oaths, Public Assistance Technical Clarification, and Police Service and Fire Service Schedule Approval Act of 1982," was introduced in Council and assigned Bill No. 4-397, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 23, 1982 and March 9, 1982, respectively. Signed by the Mayor on March 26, 1982, it was assigned Act No. 4-169 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-100. — Law 5-100, the "Public Assistance Payments Increase Act of 1984," was introduced in Council and assigned Bill No. 5-371, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 30, 1984, and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-141 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-124. — For legislative history of D.C. Law 6-124, see Historical and Statutory Notes following § 4-205.49.

Legislative history of Law 7-86. — For legislative history of D.C. Law 7-86, see Historical and Statutory Notes following § 4-206.03.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see His-

torical and Statutory Notes following § 4-205.11.

Legislative history of Law 11-152. — Law 11-152, the “Fiscal Year 1996 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 12-7. — For legislative history of D.C. Law 12-7, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Short title. — Short title: Section 5021 of D.C. Law 19-21 provided that subtitle C of title V of the act may be cited as “Office of Asian and Pacific Islander Affairs Grant-Making Authority Amendment Act of 2011”.

Expiration of Law 11-72. — See note to § 4-205.01.

Delegation of Authority. — Delegation of Authority Pursuant to the District of Columbia Public Assistance Act of 1982, see Mayor’s Order 2006-50, April 13,

Editor’s notes. — Application of provisions of Law 11-198: Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

CASE NOTES

ANALYSIS

Discretion of District.
In general.
Reduction of benefits.

Discretion of District.

In establishing standard of need and determining level of benefits to be paid to a mother receiving public assistance under Aid to Families with Dependent Children, Congress has left to the states a great deal of discretion. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. *Daniels v. Thompson*, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

States’ or District of Columbia’s discretion in establishing standard of need and determining level of benefits to be paid to mothers receiving public assistance under Aid to Families with Dependent Children is limited to fixing an amount needed by variously composed recipient units and to determining how much the state or District of Columbia is able to pay; thus, at least in its role of determining standard of need and level of benefits, a determination of what income is to be regarded and what disregarded as a resource available to the recipient unit is not within the district’s discretion. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et

seq. *Daniels v. Thompson*, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

In general.

Statute requiring Council of District of Columbia to determine welfare benefits based on recipients’ current minimum needs did not require Council to consult particular studies or obtain its own experts to assess cost of living increases in District before reducing Aid to Families with Dependent Children (AFDC) benefit levels but, rather, Council’s use of Consumer Price Index (CPI) provided objective gauge of any such increase in minimum wants. Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq.; D.C. Code 1981, §§ 3-205.10 et seq., 3-205.44(b). *Quattlebaum v. Barry*, 671 A.2d 881, 1995 D.C. App. LEXIS 256 (1995).

The “minimum needs” referred to in § 3-205.44 are the same as the “standards of assistance” set forth in this section. *Baugh v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 120 WLR 175 (Super. Ct. 1992).

The table in this section clearly demonstrates, by simple comparison, that payment levels do not meet the corresponding standards of assistance, in compliance with the holding in *Rosado v. Wyman*, 397 U.S. 397, 90 S. Ct. 1207, 25 L. Ed. 2d 442 (1970), which interpreted the U.S. Code to require states to reveal the extent

to which benefit payments do not meet the standards of assistance. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 120 WLR 175 (Super. Ct. 1992).

Reduction of benefits.

Council of District of Columbia, confronted with serious revenue shortfall, did not unlawfully reduce benefit entitlements of Aid to Families with Dependent Children (AFDC) recipients due to their receipt of food stamp allotments, despite fact that report by Council's Committee on Human Services indicated that loss of AFDC benefits would be partially offset by increase in food stamp allotments to some recipients, where facts about food stamps were mentioned only to reflect accurately consequences of proposed reduction and where Council did not use availability of food stamps to calculate reduction in AFDC benefits but, rather, used rollback of Cost of Living Adjust-

ment (COLA) which AFDC recipients had previously received. Food Stamp Act of 1977, § 8(b), 7 U.S.C. (1988 Ed.), § 2017(b); Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq.; D.C. Code 1981, § 3-205.10 et seq. *Quattlebaum v. Barry*, 671 A.2d 881, 1995 D.C. App. LEXIS 256 (1995).

Council of District of Columbia's rollback of Aid to Families with Dependent Children (AFDC) benefits to prior levels did not transgress duty of Council to inform itself of current minimum needs before modifying payment levels, where Council was aware of current minimum needs as reflected in cumulative cost of living increases for past approximately five years. Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq.; D.C. Code 1981, §§ 3-205.10 et seq., 3-205.44; § 3-205.52(d) (1990). *Quattlebaum v. Barry*, 671 A.2d 881, 1995 D.C. App. LEXIS 256 (1995).

§ 4-205.53. Reconsideration of grants; modification of amount; duty of recipient to notify Mayor of change of circumstances; grants under General Public Assistance Program for Unemployables.

(a) All public assistance grants made under this chapter shall be reconsidered by the Mayor as frequently as he or she may deem necessary, but in every case the Mayor shall make such reconsiderations at least once in each year. After such further investigation as the Mayor may deem necessary, the amount of public assistance may be changed, or may be entirely withdrawn, if the Mayor finds that any such grant has been made erroneously, or if he or she finds that the recipient's circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient becomes possessed of resources in excess of the amount previously reported by the recipient, or if other changes occur in the nonfinancial circumstances previously reported by the recipient that would alter either the recipient's need or eligibility, it shall be the recipient's duty to notify the Mayor of this information immediately upon the receipt or possession of the additional resources, or upon the change in circumstances. A recipient shall inform the Mayor whenever the recipient begins to receive earned income, if the recipient did not earn income previously, and whenever the recipient ceases to receive earned income. The recipient shall inform the Mayor as soon as the recipient becomes aware that a change will occur, rather than waiting to inform the Mayor in the periodic report required under § 4-205.54.

(b)—(d) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 553, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(h), 38 DCR 4205; Feb. 5, 1994, D.C. Law 10-68, § 10(e), 40 DCR 6311; Mar. 20, 1998, D.C. Law 12-60, § 701(q), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(rr), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.53.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(h) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(q) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(q) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(rr) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(h) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and see § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(q) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(q) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act

12-152, October 17, 1997, 44 DCR 6196), and see § 701(q) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(rr) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(rr) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(rr) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(rr) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-21. — For legislative history of D.C. Law 12-21, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-205.54. TANF assistance unit monthly report.

(a) Each TANF assistance unit whose members have earned income or recent work history and each assistance unit that has income deemed to it from individuals living with the unit who have earned income or a recent work history shall report periodically, as determined by the Mayor, on:

(1) The family's income, composition, and other circumstances relevant to the amount of the assistance payment during the reporting period specified by the Mayor;

(2) Any changes in income, resources, or other relevant circumstances (as

defined by the Mayor) affecting continued eligibility which the family expects to occur in the current reporting period or future reporting period; and

(3) If appropriate, stepparent's income and alien sponsor's income and resources.

(a-1) The periodic reporting form sent by the Mayor to a recipient shall notify the recipient that failure to provide timely, accurate, and complete information may result in grant reduction or termination.

(b) The Mayor shall establish a consistent time frame for submission of periodic reports and for submission of information concerning any change in earnings affecting eligibility between reports.

(c) When the Mayor receives a complete report within the required time frame specified by the Mayor, the Mayor shall promptly change or terminate assistance payments, as may be appropriate, on the basis of information contained in the periodic report. Timely and accurate reporting of increases in previously-reported income shall result only in adjustments of future payments without retroactive penalty for overpayment. Timely and accurate reporting of decreases in previously-reported income shall result only in adjustments of future payments without retroactive adjustments for underpayments. Written notices of a change or termination must be adequate, as defined in § 4-205.55(a)(2), and must be postmarked no later than 15 days before the date that the recipient would receive the changed payment, or would have received payment if assistance had not been terminated. A recipient has 90 days from the date the notice is postmarked to request a fair hearing. The recipient's assistance shall be paid pending the hearing only if such payment is required under § 4-205.59.

(d) If the recipient fails to file a report on time, without good cause, or if the report filed is incomplete, the Mayor shall take prompt action to terminate assistance. The Mayor shall mail the recipient written notice if assistance is being terminated as a result of failure to file or complete a report. The notice must be adequate as defined by § 4-205.55(a)(2). The notice must be postmarked no later than 15 days prior to the date the recipient would have received payment if assistance had not been terminated. A recipient has 90 days from the date the notice is postmarked to request a fair hearing. The recipient's assistance shall be paid pending the hearing only if such payment is required under § 4-205.59. If the recipient files a completed report that is received by the Mayor on or before the last day of the month in which the notice was postmarked, the Mayor shall accept this late report and shall make a payment based on the information in the report if the information reliably indicates that the recipient is still eligible for TANF. The payment in the next month shall reflect a penalty for late filing, if the Mayor determines the recipient did not have good cause for late filing. As a penalty for late filing, earned income shall not be disregarded in determining TANF eligibility and benefit levels. Payment in the month after receipt of a late report may be delayed. If the recipient is found ineligible for TANF, based on information in the late report, or eligible for an amount less than the prior period's payment, the Mayor shall promptly send the recipient written notice of the change, suspension, or termination. The written notice must be adequate as defined by

§ 4-205.55(a)(2). The recipient shall have 90 days from the date that the notice is postmarked to request a hearing. The recipient's assistance shall be paid pending the hearing only if such payment is required under § 4-205.59.

(e) If a recipient has earned income, and fails to file a report of that income on time, without good cause, the earned income, child care, and work expenses disregards shall not be allowed for the month that was to be reported on.

(f) The Mayor may require periodic reporting by any TANF recipient, or category of TANF recipients that has earned income or meets criteria, who the Mayor determines, pursuant to rules promulgated by the Mayor, is likely to calculate income eligibility erroneously.

(g) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 554, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(g), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(i), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2§§ , 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.54.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2§§ of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2§§ of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2§§ of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2§§ of

the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2§§ of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-7. — For legislative history of D.C. Law 12-7, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-130. — For legislative history of D.C. Law 12-130, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.55. Timely and adequate notice of action to discontinue, etc., assistance.

(a) The Mayor shall give timely and adequate notice in cases of intended action to discontinue, withhold, terminate, suspend, reduce assistance, or

make assistance subject to additional conditions, or to change the manner or form of payment to a protective, vendor, or 2-party payment.

(1) "Timely" means that the notice is postmarked at least 15 days before the date upon which the action would become effective, except as provided in § 4-205.54(d).

(2) "Adequate" means that the written notice includes a statement of what action the Mayor intends to take, the reasons for the intended action, the specific law and regulations supporting the action, an explanation of the individual's right to request a hearing, and the circumstances under which assistance will be continued if a hearing is requested.

(b) The Mayor may dispense with timely notice, but shall send adequate notice no later than the date upon which the action would become effective when:

(1) The Mayor has factual information confirming the death of a recipient or of the TANF or POWER payee when there is no relative available to serve as new payee;

(2) The Mayor receives a clear written statement signed by a recipient that states that he or she no longer wishes assistance, or that gives information that requires termination or reduction of assistance, and the recipient has indicated, in writing, that he or she understands the consequence of supplying this information;

(3) The recipient's whereabouts are unknown and mail sent to him or her has been returned by the post office indicating no known forwarding address. (If the recipient's whereabouts become known during the payment period covered by a returned check, the recipient's check shall be made available to him or her by the Mayor.);

(4) The recipient has been accepted for assistance in a new jurisdiction and that fact has been previously established by the Mayor; or

(5) A special allowance granted for a specific period is terminated and the recipient had been informed in writing at the time the allowance was granted that the allowance shall automatically terminate at the end of the specified period.

(c) When changes in District of Columbia law require automatic grant adjustments for classes of recipients, timely notice of these grant adjustments shall be given, which shall be deemed "adequate" if it includes a statement of the intended action, the reasons for the intended action, a statement of the specific change in law requiring the action, and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(Apr. 6, 1982, D.C. Law 4-101, § 555, 29 DCR 1060; Sept. 10, 1985, D.C. Law 6-35, § 2(j), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2(tt), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.55.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of sec-

tion, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(mm) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2 of the Temporary Assistance for Needy Families Notice Requirement Emergency Amendment Act of 1997 (D.C. Act 12-44, March 31, 1997, 44 DCR 2096).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(tt), § 2(tt) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(tt) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(tt) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

CASE NOTES

ANALYSIS

Construction and application.
Jurisdiction.
Processing of recertifications.
Remedies for violations.

Construction and application.

This section does not require personalized computations of changes in benefits, but frames the requirement in more general terms of a "statement of the intended action." *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 120 WLR 175 (Super. Ct. 1992).

Section 3-210.2(c) read in tandem with the requirement of subsection (c) of this section that the notice provide a statement of the circumstances under which a hearing may be obtained requires only that the district inform AFDC recipients that a personalized hearing will not result in any modification of the change effectuated by the Public Assistance Act of 1982 Budget Conformity Amendment Act of 1991. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 120 WLR 175 (Super. Ct. 1992).

Failure to reinform plaintiffs of their right to a computational hearing does not invalidate a notice prior to reducing benefits. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 120 WLR 175 (Super. Ct. 1992).

Jurisdiction.

District court would exercise supplemental jurisdiction over claim that denial of Medicaid

benefits violated District of Columbia statutes. D.C. Code 1981, §§ 3-205.26, 3-205.55; 18 U.S.C. § 1367. *Wellington v. District of Columbia*, 851 F. Supp. 1, 1994 U.S. Dist. LEXIS 4508 (1994).

Processing of recertifications.

District of Columbia and its officials could be held liable under § 1983 for failing to give timely and adequate notice before terminating or suspending Medicaid eligibility and by allowing benefits to lapse due to failure to process recertifications submitted by recipients whose eligibility was due to expire that month; defendants were aware of unreliability of eligibility verification system since as early as February 1993 and were aware of failure of Income Maintenance Administration (IMA) in processing recertifications, and although defendants hired computer consultants to provide short-term solutions to some problems, they failed to take concrete steps toward replacing system or permanently remedying its persistent defects. U.S. Const. Amend. 5; 42 U.S.C. § 1983; D.C. Code 1981, § 3-205.55(a); 42 C.F.R. §§ 431.210, 431.211, 435.919, 435.930(b). *Salazar v. District of Columbia*, 938 F.Supp. 926 (1996).

Remedies for violations.

Trial court's order of retroactive general public assistance benefits payments to former benefits recipients, who received notice of benefits termination from Department of Human Services (DHS) that concededly violated statutory

notice requirement, was not permissible remedy for conceded violation of notice statute; present action did not involve any violation, constitutional or statutory, which directly caused cessation of benefits, as it was failure of recipients to meet new disability criteria required by statutory amendment that caused cessation of benefits, not failure of Service thereafter to provide recipients with detailed,

fact-specific notices setting forth reasons for nondisability findings and spelling out, in non-contradictory language, recipient's appeal rights. D.C. Code 1981, §§ 3-205.53(c), 3-205.55(a). *Barry v. Little*, 669 A.2d 115, 1995 D.C. App. LEXIS 250 (1995), writ of certiorari denied by 519 U.S. 1108, 117 S. Ct. 942, 136 L. Ed. 2d 832, 1997 U.S. LEXIS 698, 65 U.S.L.W. 3567 (1997).

§ 4-205.56. Information from source other than recipient.

(a) When the information that is the basis for reduction or termination of payment comes from a source other than the recipient, the representative of the Mayor shall discuss the information with the recipient and notify him or her in writing that if the recipient does not agree with or accept the information, he or she has 15 days to present additional information, or, in lieu thereof, to request a fair hearing.

(b) In arranging the appointment for the discussion, the representative of the Mayor shall advise the recipient of his or her right to bring other persons with him or her who have knowledge of his or her situation, including a legal representative if he or she so desires.

(Apr. 6, 1982, D.C. Law 4-101, § 556, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(uu), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.56.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(uu) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(uu) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(uu) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(uu) of the Self-Sufficiency

Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(uu) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.57. Consequences of failure to request hearing or submit additional information to clarify eligibility.

If, after 15 days from the date of postmark of the written notice, the recipient does not request a fair hearing, or if applicable, does not submit additional information to clarify his eligibility status, the representative of the Mayor shall take immediate action to reduce or terminate the assistance payment, and shall notify the recipient in writing of the action taken, and its effective date.

(Apr. 6, 1982, D.C. Law 4-101, § 557, 29 DCR 1060; Sept. 10, 1985, D.C. Law 6-35, § 2(k), 32 DCR 3778.)

Prior Codifications. — 1981 Ed., § 3-205.57.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

CASE NOTES

In general.

Though refusal of public assistance recipient to comply with statutory reporting requirements regarding his receipt of federal educational financial assistance appeared to justify termination of the public assistance under District of Columbia statute, recipient's pro se status, coupled with uncertainty as to permitted uses of the federal educational funds, warranted remand for limited purpose of calculating

precise amount of public assistance which should be deducted because of the federal assistance received under room and board category. D.C. Code 1981, §§ 3-204.1, 3-205.8, 3-205.13, 3-205.13(3), 3-205.29, 3-205.31 to 3-205.57, 3-210.1; Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq. *Cruz v. District of Columbia Dep't of Human Services*, 479 A.2d 333, 1984 D.C. App. LEXIS 465 (1984).

§ 4-205.58. Consideration of additional information.

If the recipient submits additional information, the representative of the Mayor will give it due consideration to determine whether the information changes the Mayor's previous decision to reduce or terminate the assistance payment, and will notify the recipient accordingly, advising him or her of his or her right to a fair hearing.

(Apr. 6, 1982, D.C. Law 4-101, § 558, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-205.58.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.59. Effect of pending hearing.

(a) If the recipient requests a hearing before the date that the termination, suspension, or reduction of aid is to become effective, assistance shall not be discontinued, withheld, terminated, suspended, reduced or made subject to additional conditions, nor may the manner or form of payment be changed to a protective, vendor, or 2-party payment until: (1) the request for a hearing has been withdrawn; (2) a change affecting the recipient's grant occurs while the hearing is pending and the recipient fails to request a hearing after notice of the change; (3) a determination is made at the hearing that the sole issue is one of law and not of incorrect grant computation; or (4) a decision is rendered by the Mayor after a hearing and this decision upholds the Mayor in his or her action to alter the amount or conditions of the public assistance grant.

(b) Repealed.

(c) In any case in which action was taken without timely notice, when timely notice is required by law, and the recipient requests a hearing within 10 days of the postmark of the written notice of the action, the Mayor shall reinstate

assistance within 96 hours of the request for a hearing and assistance shall not be discontinued, withheld, terminated, suspended, reduced or made subject to additional conditions, nor may the manner or form of payment be changed to a protective, vendor, or 2-party payment until: (1) a determination is made at the hearing that the sole issue is one of law and not of incorrect grant computation; or (2) a decision is rendered by the Mayor after a hearing and this decision upholds the Mayor in his or her action to alter the amount or conditions of the public assistance grant.

(d) A request for a hearing made more than 10 days after the date upon which the action would become effective but within the time limits of § 4-210.09 shall be honored but shall not result in the continuation of disputed benefits. If the claimant's position is upheld by the hearing decision, the Mayor shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(Apr. 6, 1982, D.C. Law 4-101, § 559, 29 DCR 1060; Sept. 10, 1985, D.C. Law 6-35, § 2(l), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2(vv), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.59.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(vv) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(vv) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(vv) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(vv) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(vv)

of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Near the beginning of the first sentence of subsection (d), "days" was inserted following "10," to correct an apparent omission in D.C. Law 6-35.

§ 4-205.60. Benefits pending hearing. [Repealed].

Repealed.

(Sept. 10, 1985, D.C. Law 6-35, § 2(m), 32 DCR 3778.)

Prior Codifications. — 1981 Ed., § 3-205.60.

Legislative history of Law 6-35. — For

legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

§ 4-205.61. Definitions.

For the purposes of §§ 4-205.62 through 4-205.68, the term:

(1) "Board" means the District of Columbia Board of Education.

(2) "Ceased to attend school" means a pregnant or parenting teen has 20 or more consecutive full days of unexcused absences from school.

(3) "Child care" means care, supervision, and guidance for children for less than 24 hours per day per child in any licensed child development facility.

(4) "Department" means the Department of Human Services.

(5) "Dropout" means a pregnant or parenting teen who has:

(A) Ceased to attend school; or

(B) Has not graduated from high school or received a general educational equivalency diploma or certificate of completion from an alternative course of study approved by the Board; and

(C) Does not meet the school attendance requirements of § 4-205.65.

(6) "High school equivalency diploma" means a certificate of educational achievement issued under the regulations and requirements of the District of Columbia Public Schools.

(7) "Pregnant or parenting teen" means a person who has a child or children, or is pregnant in the third trimester of the first pregnancy, and is under 18 years of age.

(Apr. 6, 1982, D.C. Law 4-101, § 561, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728.)

Prior Codifications. — 1981 Ed., § 3-205.61.

Legislative history of Law 11-72. — Law 11-72, the "Public Assistance Self-Sufficiency Program Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-62, which was referred to the Committee on Human Services. The Bill was adopted on first and

second readings on June 6, 1995, and July 29, 1995, respectively. Signed by the Mayor on August 16, 1995, it was assigned Act No. 11-139 and transmitted to both Houses of Congress for its review. D.C. Law 11-72 became effective on October 27, 1995.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.62. Establishment of a Demonstration Project. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 562, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(b), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.62.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 4(b) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 4(b) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(b) of the Self-Sufficiency Promotion Legislature Review Emergency Amendment

Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(b) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(b) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.63. Eligibility for public assistance; home living requirement.

(a) This section shall apply to all applicants for, and recipients of, TANF benefits.

(b) An applicant or recipient of TANF benefits who is a pregnant or parenting teen and who has never married shall be eligible for TANF benefits only if the teen and the teen's child reside in a residence maintained by the pregnant or parenting teen's parent or legal guardian, or another adult relative of the pregnant or parenting teen that is the home of the parent, guardian, or adult relative, as determined by the Mayor, unless:

(1) The pregnant or parenting teen has no living parent, legal guardian, or other appropriate adult relative;

(2) No parent, legal guardian, or other appropriate adult relative who could otherwise qualify to act as the pregnant or parenting teen's legal guardian allows the pregnant or parenting teen to live in his or her home;

(3) The Department determines, after an investigation in accordance with regulations issued by the Mayor, that the physical or emotional health or safety of the applicant, recipient, or dependent child would be jeopardized if they resided in the same residence with the teen's parent, legal guardian, or other adult relative; or

(4) The Department determines, in accordance with regulations issued by the Mayor, that the circumstances justify a determination of good cause for the applicant or recipient and dependent child to receive assistance while living apart from the pregnant or parenting teen's parent, guardian, or other adult relative (with standards set forth in the regulations including consideration of the best interests of the dependent child).

(c) For purposes of the investigation made pursuant to subsection (b)(4) of this section, investigations shall be carried out by licensed social workers. Other trained professionals, such as doctors, nurses, or physiologists, who are deemed necessary to make sound health and safety determinations by the Department, may also be utilized.

(d) When a pregnant or parenting teen and the applicant's or recipient's dependent child are required to live with the pregnant or parenting teen's parent, legal guardian, or other adult relative, or in a setting described in subsection (e) of this section, then TANF may be paid in the form of a protective payment.

(e)(1) If the pregnant or parenting teen is exempt from the home living requirement under subsection (b) of this section, the Department shall provide or assist the pregnant or parenting teen in locating a second chance home, as defined in paragraph (2) of this subsection, a maternity home, or other appropriate adult-supervised supportive living arrangement, unless the Department determines that the pregnant or parenting teen's current living arrangement is appropriate. The Department shall consider the needs and concerns of the pregnant or parenting teen and the pregnant or parenting teen's child in providing or assisting in locating a living arrangement for the pregnant or parenting teen. The Department shall then determine the appro-

priate living arrangement for the pregnant or parenting teen and require that the pregnant or parenting teen and the dependent child live in such a living arrangement as a condition of continued receipt of TANF benefits. If the Department determines that the pregnant or parenting teen's circumstances have changed and the current arrangement ceases to be appropriate, the pregnant or parenting teen may live in an alternative appropriate arrangement and continue to receive TANF benefits.

(2) For the purposes of this subsection, the term "second chance home" means an entity that provides individuals described in subsection (b)(1), (2), (3) and (4) of this section with a supportive and supervised living arrangement in which they are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(Apr. 6, 1982, D.C. Law 4-101, § 563, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(c), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.63.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(a) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 4(a) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 4(c) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 4(a) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 4(a) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 4(a) of the Public Assistance Emergency

Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 4(c) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(c) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(c) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(c) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.64. Failure to meet home living requirement; notice.

(a) In accordance with regulations issued by the Mayor, a pregnant or parenting teen subject to the provisions of § 4-205.63 shall be informed of the eligibility requirements and the pregnant or parenting teen's rights and obligations. The Department shall advise the pregnant or parenting teen of the exemptions from the home living requirement as outlined in § 4-205.63(b) and (e). The Department shall determine whether one or more of these exemptions is applicable. The Department shall also assist the pregnant or parenting teen in attaining the necessary verifications if the teen alleges one or more of the

exemptions. The pregnant or parenting teen shall not be required to obtain verification or take steps that could endanger the pregnant or parenting teen's health or safety or that of the pregnant or parenting teen's child. The regulations shall include provisions to ensure that the pregnant or parenting teen understands his or her rights under this subchapter, the meaning of each exemption under § 4-205.63, and is given an opportunity to speak with the Department outside of the presence of the pregnant or parenting teen's parent, legal guardian, or other adult relative.

(b) If the pregnant or parenting teen or the pregnant or parenting teen's parent, legal guardian, or other adult relative does not request a fair hearing pursuant to § 4-210.05, or, if after a fair hearing has been held, the hearing officer finds that the teen is not exempt from the home living requirement and has otherwise failed to meet the requirements of § 4-205.63, the Department shall, after providing adequate and timely notice, render the pregnant or parenting teen ineligible for TANF benefits in the next possible payment month. The pregnant or parenting teen's ineligibility shall not affect the eligibility for TANF benefits of a child living with the pregnant or parenting teen who, if otherwise eligible, may receive TANF benefits determined without regard to the needs of the ineligible pregnant or parenting teen.

(Apr. 6, 1982, D.C. Law 4-101, § 564, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(d), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.64.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(b) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 4(b) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 4(d) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 4(c) § 4(b) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 4(b) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 4(b) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 4(d) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(d) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(d) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(d) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.65. Eligibility for public assistance; learnfare.

(a)(1) As a condition of eligibility for federally-funded TANF benefits, a pregnant or parenting teen who is not married and has not successfully completed a high school education or its equivalent shall be required to attend

school regularly (as defined by the Board or other entity that determines the attendance policies at the pregnant or parenting teen's educational institution or program) or be determined ineligible for federally-funded TANF benefits.

(2) The requirements of paragraph (1) of this subsection shall not affect the eligibility for TANF benefits of a child living with a pregnant or parenting teen who, if otherwise eligible, may receive TANF benefits determined without regard to the needs of the ineligible pregnant or parenting teen.

(b) The types of schools that can be attended to meet the school attendance requirements of subsection (a) of this subsection are as follows: a public school, private school, independent school, parochial school, private instruction, or a course of study or home school program meeting the standards established by the Board for granting a high school equivalency diploma.

(c) A pregnant or parenting teen who fails to meet the school attendance requirements set forth in subsection (a) of this section shall be provided counseling, tutoring, or other supportive services deemed appropriate by the Department to help the pregnant or parenting teen improve school attendance, or in the case of a drop-out, to return to school. Such supportive services will be provided as appropriations are available and in accordance with regulations issued by the Mayor.

(d) The determination of a pregnant or a parenting teen's ineligibility for federally-funded TANF benefits made pursuant to subsection (a) of this section shall be effective for one month for each month that the pregnant or parenting teen fails to meet the school attendance requirements set forth in subsection (a) of this section. In the case of a dropout, the sanctions shall remain in force until the dropout provides written proof from a school that the dropout has re-enrolled in school and met the school attendance requirements of subsection (a) of this section for one calendar month. Any month in which school is in session for at least 10 days may be used to meet the school attendance requirements.

(e) If the Department determines that a pregnant or parenting teen who has been determined ineligible for federally-funded TANF benefits pursuant to subsection (a) of this section has satisfied the requirements of subsection (d) of this section, the determination of ineligibility for federally-funded TANF benefits shall be rescinded in the next possible payment month. The pregnant or parenting teen shall not receive payment for the remainder of the month in which compliance occurs. The first payment that resumes after the pregnant or parenting teen complies with subsection (d) of this section may be delayed, depending on the date of compliance.

(f) A pregnant or parenting teen's absence on any particular day shall be determined to be an excused or an unexcused absence based on the policies of the Board or other entity that determines the attendance policies at the teen's educational institution or program. Notwithstanding such policies, a pregnant or parenting teen's absence on a particular day shall be excused under the following circumstances:

(1) The Department determines, in accordance with regulations issued by the Mayor, that child care services are necessary for the pregnant or parenting teen to attend school and there is no District funded child care service

available; child care service shall be considered unavailable if there is no space for the pregnant or parenting teen's child in a licensed child development facility within reasonable time and distance from the pregnant or parenting teen's home, or if the cost of care where space is available is excessive in the judgment of the Department and the pregnant and parenting teen participates in an alternative educational or training program that has been approved by the Department; or

(2) The pregnant or parenting teen is the caretaker of a child fewer than 12 weeks old.

(g) The determination of a pregnant or parenting teen's ineligibility for federally-funded TANF benefits provided by subsection (a) of this section shall not apply if the information about the pregnant or parenting teen's school attendance is not available or cannot be verified by the school or the approved alternative educational or training program.

(h) The pregnant or parenting teen, or his or her parent, caretaker, or legal guardian, shall cooperate in providing information to verify enrollment information or good cause for absence from school. If at least one of these individuals does not cooperate, the pregnant or parenting teen shall be determined ineligible for federally-funded TANF benefits for each month in which one of the individuals does not cooperate.

(i) The Department shall request school attendance information for a pregnant or parenting teen compiled by a school whenever necessary to ascertain school attendance requirements as required by this section.

(j) The Department shall request information from the pregnant or parenting teen's school, institution, or educational program about the attendance of a pregnant or parenting teen who is applying for or receiving federally-funded TANF benefits, and shall otherwise implement procedures for monitoring compliance with this section.

(k) School attendance records shall be open for inspection at all times to the Department or other persons authorized to enforce this section; provided, that prior written informed consent is given by the parent, caretaker, or legal guardian of a pregnant or parenting teen or by an emancipated pregnant or parenting teen.

(l) It shall be the duty of each person designated by the Superintendent of Schools, every parochial school teacher, every private school teacher, and every teacher who gives instruction privately, to provide information, upon the request of the Department, as soon as practicable to the Department concerning the school attendance of a pregnant or parenting teen who is applying for or receives federally-funded TANF benefits.

(m) This section shall apply to all applicants for, or recipients of, federally-funded TANF benefits.

(Apr. 6, 1982, D.C. Law 4-101, § 565, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(e), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.65.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 4(c) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of sec-

tion, see § 4(c) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 4(e) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 4(d) § 4(c) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 4(c) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 4(c) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 4(e) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(e) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(e) of

the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(e) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-7. — For legislative history of D.C. Law 12-7, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-130. — For legislative history of D.C. Law 12-130, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

§ 4-205.66. Failure to meet school attendance requirements; notice.

(a) Upon determination that a pregnant or parenting teen has failed without good cause to meet the school attendance requirements of subsection (b) of this section, the Department shall provide notice which specifies the following:

(1) That the pregnant or parenting teen has a right to review and copy his or her records at the expense of the pregnant or parenting teen's school pursuant to Chapter 26 of Title 5 of the District of Columbia Municipal Regulations;

(2) That prior to any action against the pregnant or parenting teen, he or she has a right to challenge, in writing, the contents of his or her school records pursuant to Chapter 26 of Title 5 of the District of Columbia Municipal Regulations; and

(3) That the pregnant or parenting teen is entitled to a hearing if he or she is not satisfied with the administrative decision pursuant to Chapter 26 of Title 5 of the District of Columbia Municipal Regulations.

(b) If the pregnant or parenting teen, or his or her parent or guardian, does not request a fair hearing pursuant to § 4-210.05, or, if after a fair hearing has been held, the hearing officer finds that the pregnant or parenting teen is not exempt from the school attendance requirements imposed by § 4-205.65(a), the Department shall determine the pregnant or parenting teen ineligible for federally-funded TANF benefits in the next possible payment month.

(c) The Department of Human Services shall develop an incentive program,

in consultation with the District of Columbia Public Schools, to encourage school attendance and recognize those who meet the attendance requirements.

(Apr. 6, 1982, D.C. Law 4-101, § 566, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(f), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.66.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(d) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 4(d) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 4(f) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 4(d) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 4(d) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 4(d) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 4(f) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(f) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(f) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(f) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 11-72. — For legislative history of D.C. Law 11-72, see Historical and Statutory Notes following § 4-205.61.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Expiration of Law 11-72. — See note to § 4-205.01.

§§ 4-205.67 Expansion of Jobs Opportunities and Basic Skills and Alternative Work Experience Programs. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 567, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.67.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 4(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 4(g) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(g) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.68. Duties of the Mayor. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 568, as added Oct. 27, 1995, D.C. Law 11-72, § 101, 42 DCR 4728; Apr. 20, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.68.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 4(g) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 4(g) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(g) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act

of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 4(g) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.69. Denial of assistance for fraudulent misrepresentation of residency.

(a) A person who has been convicted in a federal, District of Columbia, or state court of making a fraudulent statement or representation with respect to that person's place of residence in order to receive assistance simultaneously from 2 or more states under programs that are funded under title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2105; 42 U.S.C. § 601 et seq.), title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or the Food Stamp Act of 1977, approved September 29, 1977 (91 Stat. 958; 7 U.S.C. § 2011 et seq.), or to receive benefits in 2 or more states under the Supplemental Security Income program under title XVI of the Social Security Act, approved October 30, 1972 (86 Stat. 1465; 42 U.S.C. § 1381 et seq.), shall be ineligible for TANF benefits for 10 years from the date of the conviction.

(b) Subsection (a) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct that was the subject of the conviction.

(Apr. 6, 1982, D.C. Law 4-101, § 569, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.69.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(e) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 4(e) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Tempo-

rary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary addition of §§ 4-205.69 and 4-205.70, see § 4(e) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 4(e) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 4(e) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary addition of §§ 4-205.69

through 4-205.82, see § 4(h) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 4(h) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 4(h) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24,

1998, 46 DCR 521), and § 4(h) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.70. Denial of assistance for fugitive felons and probation and parole violators.

(a) A person shall be ineligible for TANF benefits if that person:

(1) Flees to avoid prosecution, custody, or confinement after conviction, under the laws of the jurisdiction from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the jurisdiction from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under New Jersey law; or

(2) Violates a condition of probation or parole imposed under federal, District of Columbia, or state law.

(b) Subsection (a) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(Apr. 6, 1982, D.C. Law 4-101, § 570, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.70.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(e) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 4(e) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.71. Granting TANF benefits to drug felons.

An adult who is a drug felon shall not be denied TANF benefits solely because he or she is a drug felon.

(Apr. 6, 1982, D.C. Law 4-101, § 571, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.71.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.72. POWER — Establishment; eligibility.

(a) There is established a Program on Work, Employment, and Responsibility (“POWER”), eligibility for which shall be the same as the factors, standards, and methodology for determining eligibility for TANF, as set forth in this subchapter, except as provided by subsections (b), (c), and (d) of this section, and §§ 4-205.73 through 4-205.77.

(b) An assistance unit shall be eligible for POWER under the following circumstances:

(1) The head of the assistance unit is the parent of a minor child;

(2) The head of the assistance unit is physically or mentally incapacitated; and

(3) The physical or mental incapacity of the head of the assistance unit rises to the level of incapacity outlined by subsection (c) of this section.

(c) For the purposes of subsection (b) of this section, physical and mental incapacity must be verified by competent medical evidence and when considered with the head of the assistance unit’s age, prior work experience, education, and other factors bearing on the head of the assistance unit’s ability to work, as determined relevant by the Mayor:

(1) Substantially precludes the ability of the head of the assistance unit to work or to participate in job search or job readiness activities; and

(2) Is expected to last more than 30 days.

(d) A person is ineligible for POWER if that person receives:

(1) Temporary Assistance for Needy Families;

(2) Supplemental Security Income; or

(3) Unemployment Compensation benefits.

(e) Sections 4-205.11a, and 4-205.19a through 4-205.19f, 4-205.19j, and 4-205.19k, shall not apply to recipients of POWER benefits.

(Apr. 6, 1982, D.C. Law 4-101, § 572, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.72.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 3-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.73. POWER — Application.

(a) The Mayor may only consider TANF applicants or TANF recipients for consideration for POWER eligibility.

(b) The Mayor may refer a TANF applicant or recipient for consideration of POWER eligibility at any time, including when a TANF applicant or recipient claims a medical incapacity exemption from work activities.

(Apr. 6, 1982, D.C. Law 4-101, § 573, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.73.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.74. POWER — Medical review.

(a) After the Mayor determines that a TANF applicant or recipient may be considered for POWER eligibility, the Mayor shall provide a medical review of the applicant or recipient to determine whether the applicant or recipient is incapacitated.

(b) The applicant or recipient shall cooperate with obtaining the medical review as a condition of eligibility for POWER.

(Apr. 6, 1982, D.C. Law 4-101, § 574, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.74.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.75. POWER — Redetermination of eligibility.

(a) A POWER recipient's eligibility for POWER shall be redetermined at intervals determined by the Mayor.

(b) A POWER recipient, who is determined ineligible for POWER solely because the recipient is no longer incapacitated, or because other factors considered with the recipient's incapacity no longer substantially precludes the recipient's ability to work or to participate in job search or job readiness activities, shall be certified as eligible for TANF in a fashion that ensures financial assistance is not disrupted, if the recipient meets all TANF eligibility criteria. The Mayor shall provide adequate and timely notice that the POWER recipient has been determined ineligible for POWER.

(Apr. 6, 1982, D.C. Law 4-101, § 575, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.75.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.76. POWER — Participation in activities to assist in achieving self-sufficiency.

(a) Following a preliminary assessment by the Mayor under TANF and a medical review, a person who has been determined to meet the eligibility criteria of § 4-205.72 shall be required, as a condition of eligibility for POWER benefits, to participate in activities that will assist the recipient in achieving self-sufficiency. The Mayor shall determine the nature, scope, amount and duration of the activities based on the medical review and the preliminary assessment.

(b) The Mayor shall promulgate rules establishing the nature and scope of the activities and the amount and duration of participation that may be required of a POWER recipient.

(c) Participation in activities required under this section shall not confer to the participant any entitlement to child care. The Mayor may provide access to publicly-funded child care to a POWER recipient if necessary for the recipient to participate in self-sufficiency activities.

(Apr. 6, 1982, D.C. Law 4-101, § 576, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.76.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.77. POWER — Failure to participate in self-sufficiency activities.

(a) If a POWER recipient who is an adult or minor head of an assistance unit fails, without good cause (as determined by the Mayor) to participate in required activities to promote self-sufficiency, the recipient shall be sanctioned in the same manner as a TANF recipient who fails to comply with the requirements of an individual responsibility plan.

(b) The Mayor shall promulgate rules defining what constitutes good cause for failure to participate in required self-sufficiency activities, in addition to those grounds described in subsections (c), (d), and (e) of this section.

(c) The Mayor shall not sanction a POWER recipient based on the failure of the recipient to participate in self-sufficiency activities if the recipient is a single custodial parent caring for a child under 6 years old, and the recipient proves that the recipient has a demonstrated inability, as determined by the Mayor, to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the recipient's home or participation site is unavailable;

(2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(d) The Mayor shall not sanction a POWER recipient based on the failure of the recipient to participate in self-sufficiency activities if the Mayor has failed to notify the recipient of the self-sufficiency activities in which the recipient must participate.

(e)(1) The Mayor shall not sanction a POWER recipient based on the failure of the recipient to participate in self-sufficiency activities if the Mayor provides the activities but placement in those activities are not yet available to the recipient.

(2) This subsection shall only apply if the POWER recipient has complied with any other obligations required of POWER applicants or recipients.

(Apr. 6, 1982, D.C. Law 4-101, § 577, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.77.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.78. POWER — Amount of assistance.

POWER payments shall be made in accordance with § 4-205.52.

(Apr. 6, 1982, D.C. Law 4-101, § 578, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.78.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.79. POWER — No creation of an entitlement.

Nothing in this chapter shall be construed to create any entitlement to POWER benefits or to confer on any person or family any entitlement to POWER benefits.

(Apr. 6, 1982, D.C. Law 4-101, § 579, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.79.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.80. POWER — Medicaid eligibility.

A POWER recipient shall be treated as a TANF recipient for purposes of Medicaid eligibility.

(Apr. 6, 1982, D.C. Law 4-101, § 580, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.80.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, Apr. 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.81. Diversion payments.

(a) For purposes of this section, “diversion payment” means a lump sum of money paid to an adult caring for a minor child in order to meet a short-term need that creates a barrier to self-sufficiency.

(b) The Mayor may make a diversion payment to the head of the assistance unit who is eligible to receive a diversion payment. Nothing in this section shall be construed to create any entitlement to a diversion payment, or to confer on any person any entitlement to a diversion payment.

(c) An individual shall be eligible to receive a diversion payment if the individual:

- (1) Is an adult;
- (2) Meets all financial eligibility requirements for TANF;
- (3) Lives with a minor child and is the caretaker of that child;
- (4) Has not received a diversion payment in the previous 12 months;
- (5) Has not received TANF, POWER, or GAC in the previous 6 months;

and

(6) Requires only short-term financial assistance to meet needs critical to maintaining or securing employment.

(d) A diversion payment shall be the amount determined by the Mayor to be necessary to meet the head of the assistance unit's needs for short-term financial assistance, but may not exceed 3 times the monthly amount of TANF benefits that the assistance unit would be eligible to receive under the TANF program.

(e) Consideration of the eligibility of a head of the assistance unit for a diversion payment may be made only after consideration of the eligibility of the head of the assistance unit for TANF, in accordance with regulations promulgated by the Mayor.

(f) The Mayor may only consider TANF applicants for consideration of diversion payment eligibility.

(g) The Mayor may refer a TANF applicant for consideration of diversion payment eligibility at any time.

(h) An applicant for assistance who the Mayor determines is eligible for diversion payment shall sign a document that lists the amount, requirements,

and conditions of the diversion payment. The recipient's signature shall indicate an understanding of and agreement to the amount, requirements, and conditions.

(i) Any diversion payment made by the Mayor shall be issued to, or on behalf of, an eligible applicant as soon as practicable after the applicant submits a completed application for assistance and has been determined by the Mayor to be eligible for a diversion payment. An application shall not be considered complete until it includes all required information and necessary documentation.

(j) A recipient of a diversion payment, and anyone who remains a member of the recipient's assistance unit, shall be ineligible to receive TANF, POWER, or GAC benefits for the number of months equal to the amount of the diversion payment divided by the monthly payment of TANF benefits that the assistance unit would be eligible to receive under the TANF program, beginning with the month in which the recipient receives the diversion payment.

(k) Diversion payments shall not count towards the 60 month lifetime limit for the receipt of TANF.

(l) Receipt of a diversion payment shall not affect the recipient's right to receive child support for children in the recipient's care.

(Apr. 6, 1982, D.C. Law 4-101, § 581, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.81.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-205.82. Provision of information concerning the Earned Income Credit.

(a) At least once per year, the Mayor may provide written notice regarding the federal Earned Income Tax Credit to each individual listed in subsection (c) of this section.

(b) The notice specified in subsection (a) of this section may include information regarding the following:

(1) A summary of the eligibility requirements for the Earned Income Credit;

(2) The amount of the maximum allowable Earned Income Credit for different family sizes;

(3) A summary of the process for applying for the Earned Income Credit, including the process for receiving advanced payments of the credit; and

(4) A telephone number to call to receive additional information about the Earned Income Credit.

(c) The notice specified in subsection (a) of this section may be provided to:

(1) Each TANF head of an assistance unit;

(2) Each adult who receives Medicaid benefits or who is caring for a child who receives Medicaid benefits; and

(3) Each Food Stamp program head of household.

(Apr. 6, 1982, D.C. Law 4-101, § 582, as added Apr. 20, 1999, D.C. Law 12-241, § 4(g), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-205.82.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4(h) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-205.69.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Subchapter VI. Emergency Public Assistance.

§ 4-206.01. Authorized; limitation. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 601, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ww), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-206.1.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(ww) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(ww) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ww) of the Self-Sufficiency Promotion Legislative Review Emergency Amend-

ment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ww) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ww) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-206.02. Crisis Assistance and Service Program.

The Mayor, in administering the Crisis Assistance and Service Program, may claim federal financial participation to the extent allowable by law for assistance and services to needy families with children, provided the family has not received assistance from any emergency program for more than 30 consecutive days within the last 12 months and provided the crisis did not arise because the child, parent, or other relative refused without good cause to accept employment or training for employment.

(Apr. 6, 1982, D.C. Law 4-101, § 602, 29 DCR 1060; Apr. 9, 1997, D.C. Law 11-192, § 3(a), 43 DCR 4285.)

Prior Codifications. — 1981 Ed., § 3-206.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of Emergency Assistance Clarifica-

tion Temporary Amendment Act of 1995 (D.C. Law 11-24, July 14, 1995, law notification 42 DCR 3830).

Emergency legislation. — For temporary amendment of section, see § 3(a) of the Emer-

gency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839), § 3(a) of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019), § 3(a) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-425, October 28, 1996, 43 DCR 6141), § 3(a) of the Emergency Assistance Clarification Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-485, January 2, 1997, 44 DCR 630), and see § 3(a) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-42, March 31, 1997, 44 DCR 2091).

§ 4-206.03. Emergency Shelter Family Services Program. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 603, 29 DCR 1060; Mar. 11, 1988, D.C. Law 7-86, § 2(b), 35 DCR 140; Mar. 16, 1989, D.C. Law 7-204, § 6, 36 DCR 454; Mar. 6, 1991, D.C. Law 8-197, § 3, 37 DCR 4815; Sept. 26, 1995, D.C. Law 11-52, § 502(f), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-192, § 3(b), 43 DCR 4285; Oct. 22, 2005, D.C. Law 16-35, § 32(a), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-206.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see §§ 2, 3(b) of Public Assistance Shelter Days Temporary Amendment Act of 1992 (D.C. Law 9-235, March 17, 2003, law notification 40 DCR 2227).

For temporary (225 day) amendment of section, see § 3(b) of Emergency Assistance Clarification Temporary Amendment Act of 1995 (D.C. Law 11-24, July 14, 1995, law notification 42 DCR 3830).

For temporary (225 day) amendment of section, see § 2(c) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 2 of the Public Assistance Shelter Days Emergency Amendment Act of 1992 (D.C. Act 9-333, December 18, 1992, 40 DCR 9).

For temporary amendment of section, see § 2(c) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 2(c) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-192. — Law 11-192, the “Emergency Assistance Clarification Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-188, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 6, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-348 and transmitted to both Houses of Congress for its review. D.C. Law 11-192 became effective on April 9, 1997.

For temporary amendment of section, see § 3(b) of the Emergency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839), § 3(b) of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019), § 3(b) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-425, October 28, 1996, 43 DCR 6141), § 3(b) of the Emergency Assistance Clarification Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-485, January 2, 1997, 44 DCR 630), and § 3(b) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-42, March 31, 1997, 44 DCR 2091).

For temporary amendment of section, see § 502(f) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 7-86. — For legislative history of D.C. Law 7-86, see Historical and Statutory Notes following § 4-206.03.

Legislative history of Law 7-204. — Law 7-204, the “Frigid Temperature Protection

Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-401, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-206.03.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 11-192. — For legislative history of D.C. Law 11-192, see Historical and Statutory Notes following § 4-206.02.

Legislative history of Law 16-35. — For Law 16-35 see notes following § 4-751.01.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-204, the "Frigid Temperature Protection Amendment

Act of 1988", see Mayor's Order 89-123, June 2, 1989.

Delegation of authority pursuant to D.C. Law 7-86, the "Emergency Shelter Services for Families Reform Amendment Act of 1987" (4-101), see Mayor's Order 90-148, October 31, 1990.

Delegation of authority pursuant to D.C. Law 3-16, the Day Care Policy Act of 1979, see Mayor's Order 94-230, November 7, 1994.

Mayor's Orders. — Declaration of an Emergency With Respect to the Urgent Need to Provide Permanent Housing for the Homeless in the District of Columbia: See Mayor's Order 89-204, September 8, 1989.

Emergency procurement to provide temporary housing for homeless families in the District of Columbia: See Mayor's Order 91-68, May 6, 1991.

Editor's notes. — Mayor's reports: Section 4 of Law 7-86 provided that within 180 days of March 11, 1988, the Mayor shall transmit to the Council a written report describing specific plans and timetables for implementing the provisions of this act. The Mayor shall transmit to the Council an annual updated written report regarding the status of the Emergency Shelter Family Program.

§ 4-206.04. Family Emergency Services Program.

The Mayor, in administering the Family Emergency Services Program, may claim federal financial participation to the extent allowable by law for assistance and services to needy families with children, provided the family has not received assistance from any emergency program for more than 30 consecutive days within the last 12 months, and provided the emergency did not arise because the child, parent, or other relative refused without good cause to accept employment or training for employment.

(Apr. 6, 1982, D.C. Law 4-101, § 604, 29 DCR 1060; Apr. 9, 1997, D.C. Law 11-192, § 3(c), 43 DCR 4285.)

Prior Codifications. — 1981 Ed., § 3-206.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of Emergency Assistance Clarification Temporary Amendment Act of 1995 (D.C. Law 11-24, July 14, 1995, law notification 42 DCR 3830).

Emergency legislation. — For temporary amendment of section, see § 3(c) of the Emergency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839), § 3(c) of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019), § 3(c) of the Emergency Assistance Clarification Congressional Review Emergency Amend-

ment Act of 1996 (D.C. Act 11-425, October 28, 1996, 43 DCR 6141), § 3(c) of the Emergency Assistance Clarification Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-485, January 2, 1997, 44 DCR 630), and see § 3(c) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-42, March 31, 1997, 44 DCR 2091).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-192. — For legislative history of D.C. Law 11-192, see Historical and Statutory Notes following § 4-206.02.

§ 4-206.05. Emergency shelter allowances.

The Mayor, in providing emergency shelter allowances to families who are receiving TANF to enable them to obtain public housing, may claim federal financial participation to the extent allowable by law, provided the family has not received assistance from any emergency program for more than 30 consecutive days within the last 12 months.

(Apr. 6, 1982, D.C. Law 4-101, § 605, 29 DCR 1060; Apr. 9, 1997, D.C. Law 11-192, § 3(d), 43 DCR 4285; Apr. 20, 1999, D.C. Law 12-241, § 2(xx), 46 DCR 905.)

Cross references. — Hospitals and asylums, free clinical health services to person receiving assistance under this subchapter, see § 44-731.

Prior Codifications. — 1981 Ed., § 3-206.5.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(d) of Emergency Assistance Clarification Temporary Amendment Act of 1995 (D.C. Law 11-24, July 14, 1995, law notification 42 DCR 3830).

For temporary (225 day) amendment of section, see § 2(o) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(o) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(xx) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 3(d) of the Emergency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839), § 3(d) of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019), § 3(d) of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-425, October 28, 1996, 43 DCR 6141), § 3(d) of the Emergency Assistance Clarification Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-485, January 2, 1997, 44 DCR 630), and § 3(d) of the Emergency Assistance Clarification Congressional Review Emergency

Amendment Act of 1997 (D.C. Act 12-42, March 31, 1997, 44 DCR 2091).

For temporary amendment of section, see § 2(o) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(o) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(o) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(xx) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(xx) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(xx) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(xx) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) addition, see §§ 2 to 5 of District of Columbia State of Emergency Disaster, Relocation, and Recovery Assistance Emergency Act of 2005 (D.C. Act 16-180, October 4, 2005, 52 DCR 9082).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-192. — For legislative history of D.C. Law 11-192, see Historical and Statutory Notes following § 4-206.02.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

*Subchapter VII. Complementary Program Relationships with
Public Assistance Programs.*

§ 4-207.01. Policy. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 701, 29 DCR 1060; July 27, 1995, D.C. Law 11-52, § 502(g), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 3-207.1.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 502(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary repeal of subchapter, see § 502(f) of the Multiyear Budget Spending Reduction and Support

Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary repeal of subchapter, see § 502(g) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

§ 4-207.02. Authority to establish. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 702, 29 DCR 1060; July 27, 1995, D.C. Law 11-52, § 502(g), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 3-207.2.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 502(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — See notes to § 4-207.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

§ 4-207.03. Rules. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 703, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 3, 31 DCR 6425; July 27, 1995, D.C. Law 11-52, § 502(g), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 3-207.3.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 502(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — See notes to § 4-207.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

§ 4-207.04. Appropriations. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 704, 29 DCR 1060; July 27, 1995, D.C. Law 11-52, § 502(g), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 3-207.4.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 502(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — See notes to § 4-207.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

Subchapter VIII. Award; Method of Payment.

§ 4-208.01. Determination by Mayor; method of payment.

(a) Upon completion of the investigation pursuant to subchapter IX of this chapter, the Mayor shall determine whether the applicant is eligible for public assistance, the type and amount of public assistance for which he or she is eligible, and the date from which public assistance shall begin. The Mayor shall furnish public assistance with reasonable promptness to each person to whom the Mayor, in his or her discretion, provides public assistance. For the TANF, POWER, and GAC programs, an application for assistance shall be effective on the date that the application is filed. The amount payable for the initial month shall be prorated by multiplying the amount payable if payment were made for the entire month by the ratio of the days in the month including and following the date of application to the total number of days in a month.

(b) Money payments of public assistance shall be made by check or electronic benefit transfer, except that in emergency cases money payments of public assistance may be made in cash, and to accomplish such purpose the Mayor may make necessary provisions for advancing from time to time to one or more officers or employees of the District such sum or sums as the Mayor may determine; provided, that no such advance shall be made to any such officer or employee who has not been previously bonded in such amount and form as the Mayor shall determine.

(Apr. 6, 1982, D.C. Law 4-101, § 801, 29 DCR 1060; Mar. 14, 1984, D.C. Law 5-53, § 2(c), 30 DCR 6278; Sept. 10, 1985, D.C. Law 6-35, § 2(n), 32 DCR 3778; Aug. 17, 1991, D.C. Law 9-27, § 2(i), 38 DCR 4205; Mar. 20, 1998, D.C. Law 12-60, § 701(r), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(yy), (zz), 46 DCR 905; Apr. 20, 1999, D.C. Law 12-264, § 15(b), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 3-208.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(i) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(r) of General Public Assistance Program Termination Temporary Amendment

Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(r) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(yy), (zz) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(i) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(i) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(r) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(r) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(r) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency

Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(yy) and (zz) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(yy) and (zz) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(yy) and (zz) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(yy) and (zz) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-53. — For legislative history of D.C. Law 5-53, see Historical and Statutory Notes following § 4-208.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 4-202.05.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-208.02. Supplemental payments.

The Mayor may authorize a supplemental payment when necessary to meet the needs of its clients, according to established budget standards. A supplemental payment is defined as the 2nd payment to a recipient of public assistance for the same month.

(Apr. 6, 1982, D.C. Law 4-101, § 802, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-208.2.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-208.03. Underpayment corrections.

(a) When a recipient of public assistance receives a payment or series of payments in an amount less than that for which the recipient is eligible, or does not receive payments for which the recipient is eligible, the underpayment shall be corrected retroactively for not more than 12 months prior to whichever of the following occurs first:

(1) The date the Mayor received a request for restoration of assistance from the recipient;

(2) The date the recipient requested a fair hearing concerning the loss of assistance; or

(3) The date the Mayor is notified or otherwise discovered that a loss of benefits to an assistance unit has occurred.

(b) Nothing in this section shall be construed to confer an entitlement to public assistance to any individual. The decision to grant public assistance to an eligible individual lies in the sole discretion of the Mayor.

(Apr. 6, 1982, D.C. Law 4-101, § 803, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(aaa), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-208.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(aa) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(aaa) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(aaa) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(aaa) of the Self-

Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(aaa) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-208.04. Amount of assistance payable.

The amount of assistance that the Mayor may pay to a TANF, POWER, or GAC recipient shall be the amount for which the individual or family is eligible, rounded down, when not a whole dollar amount, to the next lower whole dollar amount, except as provided in § 4-205.51.

(Apr. 6, 1982, D.C. Law 4-101, § 804, 29 DCR 1060; Mar. 14, 1984, D.C. Law 5-53, § 2(b), 30 DCR 6278; Apr. 20, 1999, D.C. Law 12-241, § 2(bbb), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-208.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(p), (x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(p), (x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(xx) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law

12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(p) and (x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(p) and (x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(p) and (x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(bbb) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(bbb) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C.

Act 12-425, July 31, 1998, 45 DCR 5682), § 2(bbb) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(bbb) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-53. — For legislative history of D.C. Law 5-53, see Historical and Statutory Notes following § 4-208.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-208.05. Repayment by GPA recipient.

(a) For any month in which a person who received benefits under the former General Public Assistance ("GPA") program received both GPA and Supplemental Security Income ("SSI"), the former GPA recipient shall repay to the District of Columbia:

(1) The entire GPA monthly assistance payment if the SSI benefits received equaled or exceeded the GPA payment; or

(2) That portion of the GPA monthly assistance payment equal in amount to the SSI benefits received if the SSI benefits received were less than the GPA payment.

(b) In order to make repayment in accordance with subsection (a) of this section, a former GPA recipient who applied for SSI must have agreed to have the initial SSI benefit forwarded directly to the Department of Human Services.

(c) Upon receipt of a former GPA recipient's initial SSI benefit, the Department shall calculate, in accordance with subsection (a) of this section, the amount of the benefit due to the Department as repayment and the amount, if any, due the former GPA recipient. The Department shall provide the former GPA recipient with a written explanation of this calculation and shall pay any amount due the former GPA recipient, in accordance with 42 U.S.C. § 1383 (g) and SSA Interim Assistance Provisions, 20 C.F.R. § 416.1901 to 416.1922 (1983).

(d) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 805, as added Mar. 14, 1984, D.C. Law 5-53, § 2(d), 30 DCR 6278; Mar. 20, 1998, D.C. Law 12-60, § 701(s), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(ccc), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-208.5.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(s) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 2760).

For temporary (225 day) amendment of section, see § 701(s) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(ccc) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(s) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(s) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(s) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(ccc) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ccc) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C.

Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ccc) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ccc) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 5-53. — Law 5-53, the “Public Assistance Act of 1982 Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-92, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 1983, and November 15, 1983, respectively. Signed by the Mayor on November 21, 1983, it was assigned Act No. 5-79 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor’s notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Subchapter IX. Investigation of Applicants; Issuance of Identification Card; Check Distribution.

§ 4-209.01. Investigation of applicants; issuance of identification cards; distribution of checks.

(a) Whenever the Mayor shall receive an application for public assistance, he or she shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as he or she may require.

(b) After determining that a person is eligible to receive public assistance, the Mayor may issue to such person a public assistance identification card which may be used by such person in obtaining any public assistance, and as a means of identifying him or her as the proper recipient of such public assistance. The public assistance identification card shall contain the name, social security number, and account or case number of the recipient to whom such card was issued.

(c) The Mayor may by rule prescribe additional uses and requirements with respect to the issuance and use of the public assistance identification card as he or she deems necessary. Nothing in this section shall be construed to require recipients of public assistance to receive their monthly allotment checks in person at 1 central location. The Mayor shall by rule establish such means of distribution of such checks which, utilizing the public assistance identification

card, will insure the least amount of fraud and loss of such checks without unduly burdening the recipients of such checks.

(Apr. 6, 1982, D.C. Law 4-101, § 901, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ddd), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-209.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(ddd) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(ddd) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ddd) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ddd) of the Self-

Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ddd) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-209.02. Adverse action not permitted for refusal to allow entry into home or permit inspection thereof. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 902, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(eee), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-209.2.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(eee) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(eee) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(eee) of the Self-Sufficiency Promotion Legislative Review Emergency Amend-

ment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(eee) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(eee) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-209.03. Notification of adverse action not permitted. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 903, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(fff), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-209.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(fff) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(ff) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 8, 1998, 45 DCR 4270), § 2(ff) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ff) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment

Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521) and § 2(ff) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-209.04. Confidentiality of information.

(a) For the purposes of this section, the term:

(1) “Administering” means running public benefits programs in a manner that complies with District of Columbia or federal laws, rules, or regulations.

(2) “Applicant” means an individual who has submitted an application for services under one or more IMA programs.

(3) “Disclosure” means the release, transfer, provision of, provision of access to, or distribution of information in any manner by an entity holding the information to a person outside of the entity.

(4) “Health Insurance Portability and Accountability Act” means the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. 104-191; 110 Stat. 1936), and the regulations issued thereunder, 45 C.F.R. Parts 160 and 164, enacted for the primary purpose of safeguarding the privacy of an individual’s protected health information by restricting the use or disclosure of the information to certain limited circumstances, such as treatment by medical providers, payment of medical bills, or health care operations.

(5) “IMA” means the Income Maintenance Administration within the Department of Human Services.

(6) “IMA programs” means public benefit programs, including TANF, POWER, Medical Assistance (including Medicaid), Food Stamps, Interim Disability Assistance, Burial Assistance, Refugee Resettlement Assistance, General Assistance for Children, Child Care Subsidy, Emergency Rental Assistance, and programs under titles I, V-A, IV-D, XVI, or XIX of Title 21 of the Social Security Act, approved August 14, 1935 (49 Stat. 757; 42 U.S.C. § 301 et seq.), and such other public benefits programs as may be designated as IMA programs by the Mayor.

(7) “Individual’s representative” means a person authorized in writing to review or copy an applicant’s or recipient’s record, or submit or receive information on behalf of the applicant or recipient by:

(A) The applicant or recipient;

(B) A court of competent jurisdiction; or

(C) A person otherwise authorized by law to make decisions on behalf of the applicant or recipient, including decisions related to health care, such as the custodial parent, legal guardian, or personal representative, as set forth at 45 C.F.R. § 164.502(g).

(8) “Personal notes” means:

(A) Mental health information regarding an applicant or recipient disclosed to a mental health professional in confidence by other persons on

condition that such information not be disclosed to the applicant or recipient, or to other persons; and

(B) A mental health professional's speculations about the applicant or recipient.

(9) "Personal representative"[§] means a person who:

(A) Under applicable law, has the authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care;

(B) Is an executor, administrator, or other person who, under applicable law, has authority to act on behalf of a deceased individual or the individual's estate; or

(C) Is a parent, guardian, or other person acting in loco parentis who may have the authority to act on behalf of an unemancipated minor, as more fully set forth at 45 C.F.R. § 164.502(g).

(10) "Protected health information" means any individually identifiable information, whether oral or recorded, in any form or medium, that is created or received and relates to the past, present, or future physical or mental health condition of an applicant or recipient, or to the payment for health care for an applicant or recipient.

(11) "Recipient" means an applicant who meets the eligibility requirements and has been determined eligible to receive services through an IMA program.

(12) "Record" or "applicant's or recipient's record" means any hard copy or electronic item, collection, or grouping of information, which includes protected health information, relating to an applicant or recipient that is maintained, collected, used, or disseminated for the purpose of administering an IMA program. The term "record" or "applicant's or recipient's record" includes information that the government of the District of Columbia collects and stores by the operation or administration of computerized public benefits eligibility screening tools.

(b) IMA shall keep records to document information about applicants and recipients relating to IMA programs. The information shall be privileged and confidential and shall only be used or disclosed in accordance with this section.

(1) The applicant or recipient has a right to privacy and shall be provided with a written notice about IMA's privacy practices and the conditions governing inspection of records. A copy of the notice shall be maintained in the applicant's or recipient's record.

(2) IMA shall secure the written authorization of the applicant, recipient, or individual's representative pursuant to the requirements of 45 C.F.R. § 164.508 before requesting or disclosing information about the applicant or recipient to or from other agencies or individuals. A copy of the authorization shall be maintained in the applicant's or recipient's record.

(3) An applicant or recipient shall submit a verbal or written request and an individual's representative shall submit a written request to access information in an applicant's or recipient's record, including protected health information. Except for psychotherapy and personal notes, and information compiled in reasonable anticipation of, or for use in, a civil, criminal, or

administrative action or proceeding, the IMA shall make all information in the applicant's or recipient's record available to the applicant, recipient, or the individual's representative.

(A) IMA shall permit inspection or provide a copy of the information no later than 30 days after receiving the written request if the information is available on-site unless the applicant or recipient is under investigation pursuant to any provisions of subsection (c) of this section. If the written request is for information that is not maintained by or accessible to IMA on-site and IMA has knowledge of the information and its location, IMA must permit inspection or provide a copy of the information no later than 60 days after receiving the written request.

(B) If IMA authorizes disclosure to a third party, other than the applicant or recipient's individual representative, pursuant to a valid authorization, the disclosure shall be limited to the information specifically identified in a written authorization from the applicant, recipient, or the individual's representative.

(4) An applicant, recipient, or individual's representative who believes that information in an applicant's or recipient's record is inaccurate or misleading may request that IMA amend the information by submitting a written request for amendment setting forth the reason for the change, including documentation, where appropriate. Within 60 days after it receives the request, the IMA shall make a determination on the request and either make amendments to the record or deny the request.

(A) The IMA may deny a request for amendment if the information sought to be amended:

(i) Was not created by IMA, unless the individual requesting the amendment provides a reasonable basis to believe that the originator of the protected health information or the information in the record is no longer available to act on the requested amendment;

(ii) Is not part of the record;

(iii) Is not available for inspection as provided in paragraph (3) of this subsection; or

(iv) Is accurate and complete.

(B) If the request for amendment is denied, the IMA shall provide the applicant, recipient, or the individual's representative with a written response setting forth the reason for denying the request for amendment and the procedures on how to request reconsideration of the decision, including a statement that the applicant, recipient, or individual's representative has a right to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.

(C) If the request for amendment is granted, the IMA shall notify the applicant, recipient, or individual's representative of the decision and how to obtain authorization concerning persons to be notified of the amendment.

(D) All documentation generated from a request for amendment shall be included in the record of the applicant or recipient.

(c) All information and records regarding an applicant or recipient provided to or created by the IMA, its representatives, or its employees, in the course of

the administration of IMA programs, shall be privileged and confidential and shall only be disclosed:

(1) To the applicant, recipient, or individual's representative, in accordance with subsection (b) of this section;

(2) To a third party, with a written authorization signed by the applicant, the recipient, or the individual's representative authorizing disclosure of the specific record, or specific parts of the record; or

(3) Without consent for one of the following purposes:

(A) To administer IMA programs;

(B) To aid in any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of IMA programs;

(C) To administer any federal or federally-assisted program, which provides assistance, in cash or in-kind, or services directly to individuals on the basis of need;

(D) To verify a state employment services agency for the purposes of providing information about a public assistance recipient's eligibility for employer tax credits, except that protected health information shall not be disclosed to such agency;

(E) For an audit or similar activity, such as review of expenditure reports or financial review, conducted in connection with the administration of any public assistance program by any governmental entity which is authorized by law to conduct such audit or activity;

(F) To administer the unemployment compensation program for the District of Columbia or any other state unemployment compensation program, except that protected health information shall not be disclosed to such agency or program;

(G) To report to the Metropolitan Police Department information on known or suspected instances of physical or mental injury, sexual abuse, or exploitation, or to report to the appropriate authority charged with investigating such allegations information on known or suspected instances of negligent treatment or maltreatment of a child or vulnerable adult receiving aid under circumstances which indicate that the child's or vulnerable adult's health or welfare is threatened;

(H) To comply with a court order (a subpoena being insufficient) issued by a court of competent jurisdiction to compel disclosure of an applicant's or recipient's record or testimony of any Mayor's representative concerning an applicant or recipient for purposes directly related to the purposes listed in subparagraphs (A) through (G) of this paragraph; or

(I) For the purposes of and in accordance with Chapter 2A of Title 7 [§ 7-241 et seq.].

(d)(1) The administrator of the IMA shall approve each request for disclosure of a record made pursuant to subsection (c)(3) of this section before the IMA releases the record, or any portion thereof. For each disclosure of a record pursuant to subsection (c)(3) of this section, the IMA shall:

(A) Record the disclosure in the applicant's or recipient's record;

(B) Disclose only the information minimally necessary to satisfy the purpose of the request; and

(C) Maintain a central log accounting for disclosures of protected health information.

(2) An accounting for an approved disclosure shall contain, at minimum, the following:

(A) The date of the disclosure;

(B) The name of the person or entity that received the information and, if known, the address of the entity or person;

(C) A brief description of the information disclosed; and

(D) A brief statement of the purpose of the disclosure that states the exact basis for disclosure or, in lieu of that statement, a copy of the written request for disclosure.

(3) Accounting is not required if the information is disclosed:

(A) To administer IMA programs, or to carry out treatment, payment, and health care operations;

(B) To persons involved in the applicant's or recipient's care;

(C) For national security or intelligence purposes;

(D) To correctional institutions or law enforcement officials;

(E) Prior to April 14, 2003; or

(F) For the purposes of and in accordance with Chapter 2A of Title 7 [§ 7-241 et seq.].

(e) The IMA shall review a requestor's credentials to verify the requestor's identity and authority before disclosing records to an applicant, recipient, or individual's representative, or to a person requesting disclosure of records pursuant to subsection (c)(3) of this section.

(f) The IMA shall implement appropriate procedures to ensure the security of records and to minimize inadvertent disclosures of confidential records, including protected health information.

(g) The IMA shall retain all information in an applicant's and recipient's record for at least 3 years after the case is closed. A request for a disclosure of information under subsection (c)(3) of this section, along with the supporting documentation for each such request that the IMA is required to maintain under subsection (d) of this section, shall be retained by the IMA for at least 6 years, and shall be disclosed to an applicant, recipient, or individual representative upon written request.

(h) The IMA shall ensure that IMA employees are trained on the provisions of this section and are aware that unauthorized use or disclosure of records may constitute cause for adverse or corrective personnel action.

(i) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section.

(Apr. 6, 1982, D.C. Law 4-101, § 904, as added Apr. 20, 1999, D.C. Law 12-241, § 2(ggg), 46 DCR 905; Nov. 16, 2006, D.C. Law 16-178, § 2, 53 DCR 6691; Dec. 4, 2010, D.C. Law 18-273, § 201, 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 3-209.4.

Effect of amendments. — D.C. Law 16-178 rewrote the section.

D.C. Law 18-273 rewrote subsec. (a)(6): in

subsec. (c)(3), deleted “; or” from the end of subpar. (G); substituted “; or” for a period at the end of subpar. (H), and added subpar. (I); and, in subsec. (d)(3), deleted “; or” from the end of subpar. (D); substituted “; or” for a period at the

end of subpar. (E), and added subpar. (F). Prior to amendment, subsec. (a)(6) read as follows: “(6) ‘IMA programs’ means public benefit programs, including TANF, POWER, Medical Assistance (including Medicaid), Food Stamps, Interim Disability Assistance, Burial Assistance, Refugee Resettlement Assistance, General Assistance for Children, and programs under titles I, V-A, IV-D, XVI, or XIX of Title 21 of the Social Security Act, approved August 14, 1935 (49 Stat. 757; 42 U.S.C. § 301 et seq.).”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Temporary Amendment Act of 2004 (D.C. Law 15-229, March 16, 2005, law notification 52 DCR 3555).

For temporary (225 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Temporary Amendment Act of 2005 (D.C. Law 16-63, March 8, 2006, law notification 53 DCR 2334).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(q) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) addition of section, see § 2(q) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) addition of section, see § 2(gg) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary addition of section, see § 2(ggg) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ggg) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ggg) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ggg) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Emergency Amendment Act of 2004 (D.C. Act 15-507, August 2, 2004, 51 DCR 8938).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Congressional Review Emer-

gency Amendment Act of 2004 (D.C. Act 15-622, November 30, 2004, 51 DCR 11462).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-8, January 19, 2005, 52 DCR 2688).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Emergency Amendment Act of 2005 (D.C. Act 16-204, November 17, 2005, 52 DCR 10515).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-261, January 26, 2006, 53 DCR 788).

For temporary (90 day) amendment of section, see § 2 of Public Assistance Confidentiality of Information Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-484, October 18, 2006, 53 DCR 8647).

For temporary (90 day) amendment of section, see § 201 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 201 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-178. — Law 16-178, the “Public Assistance Confidentiality of Information Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-571, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 21, 2006, it was assigned Act No. 16-456 and transmitted to both Houses of Congress for its review. D.C. Law 16-178 became effective on November 16, 2006.

Legislative history of Law 18-273. — Law 18-273, the “Data-Sharing and Information Coordination Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-356 which was referred to the Committee on Health and Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 29, 2010, respectively. Signed by the Mayor on July 20, 2010, it was assigned Act No. 18-489 and transmitted to both Houses of Congress for its review. D.C. Law 18-273 became effective on December 4, 2010.

*Subchapter X. Hearing Procedures.***§ 4-210.01. Right to hearing; notification of right.**

An applicant for, or recipient of, public assistance aggrieved by the action or inaction of the Mayor shall be entitled to a hearing. Each applicant or recipient shall be notified of his or her rights to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted in accordance with the provisions of this subchapter. The findings of the Mayor on any appeal shall be final.

(Apr. 6, 1982, D.C. Law 4-101, § 1001, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.1. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

CASE NOTES**In general.**

Though refusal of public assistance recipient to comply with statutory reporting requirements regarding his receipt of federal educational financial assistance appeared to justify termination of the public assistance under District of Columbia statute, recipient's pro se status, coupled with uncertainty as to permitted uses of the federal educational funds, warranted remand for limited purpose of calculating

precise amount of public assistance which should be deducted because of the federal assistance received under room and board category. D.C. Code 1981, §§ 3-204.1, 3-205.8, 3-205.13, 3-205.13(3), 3-205.29, 3-205.31 to 3-205.57, 3-210.1; Social Security Act, § 401 et seq., as amended, 42 U.S.C. § 601 et seq. *Cruz v. District of Columbia Dep't of Human Services*, 479 A.2d 333, 1984 D.C. App. LEXIS 465 (1984).

§ 4-210.02. Grounds; objectives of hearing process.

(a) The Mayor, upon receipt of an application made pursuant to § 4-210.05, shall grant a fair hearing to any applicant for or a recipient of public assistance whose claim for assistance has been denied or has not been acted upon within a reasonable time not to exceed 45 days; or who is aggrieved by any other action or inaction of the Mayor which affects the receipt, termination, amount, kind, or conditions of his assistance.

(b) The following are the major objectives of the hearing process in public assistance:

(1) To enable the Mayor and the claimant to ascertain jointly the factual basis on which, through proper application of the assistance law and agency policies, a just and equitable decision may be reached;

(2) To safeguard applicants and recipients from mistaken, negligent, unreasonable, or arbitrary action by agency staff; and

(3) To reveal aspects of agency policy that are inequitable or constitute a misconstruction of law. It is intended to submit policy to test and argument, and to place in the hands of policy-making officials evidence indicating the need for modification of policies and standards, and the nature of the needed modification.

(c) A hearing need not be granted when either District or federal law

requires automatic grant adjustments for classes of recipients of TANF, POWER, or GAC unless the reason for an individual appeal is incorrect computation of the grant.

(Apr. 6, 1982, D.C. Law 4-101, § 1002, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(j), 38 DCR 4205; Mar. 20, 1998, D.C. Law 12-60, § 701(t), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(hhh), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-210.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(j) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(r) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(t) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(t) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(r) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(hhh) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(j) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(j) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(r) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(r) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(t) of the General Public Assistance Pro-

gram Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(t) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(t) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(r) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(hhh) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(hhh) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(hhh) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(hhh) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

CASE NOTES

Notice of hearing.

Subsection (c) of this section read in tandem

with the requirement of § 3-205.55(c) that the notice provide a statement of the circumstances

under which a hearing may be obtained requires only that the district inform AFDC recipients that a personalized hearing will not result in any modification of the change effectuated by the Public Assistance Act of 1982

Budget Conformity Amendment Act of 1991. Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs, 120 WLR 175 (Super. Ct. 1992).

§ 4-210.03. Hearing officers.

(a) All hearings relating to individual appeals shall be conducted by properly designated hearing officers. Hearing officers are directly responsible to the Mayor in carrying out their duties.

(b) The Mayor shall designate other Department personnel to serve as hearing officers when regular hearing officers are absent or when the number of requests for hearings are too numerous to be expedited by the regular hearing officers. Hearing officers shall be selected from personnel who are not connected with public assistance activity or otherwise involved with the implementation of the public assistance program and shall be directly responsible to the Mayor in carrying out the duties of the hearing officer.

(Apr. 6, 1982, D.C. Law 4-101, § 1003, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.3. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

§ 4-210.04. Notification of right to request hearing and method of making request.

(a) Written information regarding the right to request a hearing and the method of making such request shall be furnished by the Mayor to each public assistance applicant or recipient at the time of application and whenever the Mayor notifies the applicant or recipient that it intends to take action which may or will adversely affect him or her or his or her benefits, including changes in or terminations of assistance payments. Such written notice shall include information that the claimant has the right to be represented by legal counsel or by a lay person who is not an employee of the District; that he may bring witnesses in his or her behalf; that reasonable expenses related to the hearing, such as transportation costs for the claimant and his or her witnesses, will be paid by the Mayor, and that legal services are available to the claimants.

(b) A copy of the rules relating to hearing procedures will be furnished to all claimants at the time a hearing is requested pursuant to § 4-210.05.

(Apr. 6, 1982, D.C. Law 4-101, § 1004, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(iii), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-210.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(iii) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(iii) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(iii) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(iii) of the Self-Suffi-

ciency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(iii) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-210.05. Request for hearing.

Any applicant or recipient, or his or her representative may request a hearing by giving a clear expression, oral or written, that he or she wants an opportunity to present his or her case to a higher authority. A request for a hearing shall be accepted by any administrative staff member employed by the Mayor to whom the request is submitted. The Mayor shall acknowledge promptly any request for a hearing, and a representative of the Mayor shall assist the claimant in submitting and processing his request for hearing. The Mayor shall treat a request made by a representative of the claimant as if made by the claimant; provided, that the claimant shall submit written authorization within 10 days of such request designating that person as his or her representative.

(Apr. 6, 1981, D.C. Law 4-101, § 1005, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.5.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-210.06. Hearing involving medical issues.

When the hearing involves medical issues, the medical assessment of the claimant's condition must be made by a medical authority other than the persons who made the original medical determination if the hearing officer or the claimant considers an additional examination necessary. The additional medical assessment shall be limited to one assessment which shall be obtained at agency expense, and, when requested by the claimant, shall be obtained from a medical source satisfactory to the claimant.

(Apr. 6, 1982, D.C. Law 4-101, § 1006, 29 DCR 1060; Aug. 17, 1991, D.C. Law 9-27, § 2(k), 38 DCR 4205.)

Prior Codifications. — 1981 Ed., § 3-210.6.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101(k) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

Emergency legislation. — For temporary amendment of section, see § 101(k) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(k) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

§ 4-210.07. Procedures for administrative review of request.

The Mayor shall establish procedures for administrative review of every request for a hearing. The purpose of such review shall be ascertainment of the validity of the Mayor's position, and, if possible, achievement of an informal solution of the claim. Such procedures shall include:

(1) Notice to the claimant at the time of adverse agency action, including the decision to take future action, of his or her right to a fair hearing and to administrative review of that action, and notice that he or she may be represented at the hearing or the administrative review either by an attorney or lay person; provided, that such representative shall serve only in an advisory capacity to the claimant at the administrative review;

(2) Notice to the claimant of the time and place of such review;

(3) Notice to the claimant of the purpose of such review;

(4) Notice to the claimant that such review will not be made unless he appears, but that his failure to appear will not affect his or her right to the hearing he or she has previously requested;

(5) Notice to the claimant of the result of such review;

(6) Advice to the claimant that, if the result of such review is not satisfactory to him, the hearing which he previously requested will be held; and

(7) Advice to the claimant that, if he or she is satisfied with the result of such review, his or her request for a hearing will be considered formally withdrawn, and that he or she may be required to sign a statement confirming such withdrawal.

(Apr. 6, 1982, D.C. Law 4-101, § 1007, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.7. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

§ 4-210.08. Time, date, and place of hearing.

The hearing shall be held at a time, date, and place designated by the Mayor's agent. Adequate notice shall be given the claimant and his or her representative, including such information concerning hearing procedures as may be necessary for his or her effective preparation therefor. If the claimant shall notify the Mayor's agent that either the time or place designated by the Mayor's agent is not convenient to him or her and requests a new time or place for such hearing, the hearing officer shall designate another time or place which is convenient to the claimant if he or she deems the claimant has sufficient reason for so requesting a change.

(Apr. 6, 1982, D.C. Law 4-101, § 1008, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.8. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For 201.01.

§ 4-210.09. Time limit on requests.

(a) A request for a hearing to review adverse action by the Mayor concerning any new application for public assistance or any application or request for a change in the amount, kind, or conditions of public assistance must be made within 90 days following the postmark of the notification to the applicant or recipient, pursuant to § 4-210.04, of such adverse action by the Mayor and of his or her right to a hearing with respect to that action.

(b) A request for a hearing to review a decision by the Mayor to terminate, reduce, or change the amount, kind, or conditions of public assistance benefits, or to take other action adverse to the recipient must be made within 90 days following the postmark of notice from the Mayor of his or her intention to make such change or take such action.

(c) A request for a hearing must be granted by the Mayor. A time and place shall be designated for such hearing and the applicant shall be notified of such time and place within 5 days of this request for a hearing. Hearing shall be held within a reasonably short time following the request, such time not to exceed 45 days following the initial request for a hearing.

(Apr. 6, 1982, D.C. Law 4-101, § 1009, 29 DCR 1060; Sept. 10, 1985, D.C. Law 6-35, § 2(o), 32 DCR 3778.)

Prior Codifications. — 1981 Ed., § 3-210.9.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

§ 4-210.10. Hearing procedure enumerated.

The hearing officer shall conduct the hearing in such a manner as to insure that both the claimant and the Mayor's agent have the opportunity to present all facts which in their judgment have a bearing on the hearing, and have adequate opportunity to examine material that will be introduced as evidence. He or she shall cause the pertinent proceedings to be recorded. He or she shall allow the individual, or his or her counsel, to examine and cross-examine and to present oral argument and documentary evidence. He or she shall permit the Mayor to introduce such evidence from the case record or other data secured by special investigation as pertains to the case, providing that such data is also made available to the claimant or his or her representative. If data from a special investigation is used, the claimant or his or her representative shall have the opportunity to examine the Mayor's agent's investigator who performed such investigation and to inspect and use for the purpose of cross-examination any data, document, or record secured by the Mayor's agents having any bearing on the matter involved or in the decision giving rise to the hearing. If data from the case record is used, the claimant, or his or her representative, shall be allowed to inspect the case record for the purpose of discovering information favorable to the claimant's case. The Mayor's agents

shall not be represented by an attorney at any hearing or administrative review in which the claimant is not represented by an attorney.

(Apr. 6, 1982, D.C. Law 4-101, § 1010, 29 DCR 1060; Feb. 27, 1998, D.C. Law 12-55, § 2(a), 44 DCR 6068.)

Prior Codifications. — 1981 Ed., § 3-210.10.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Public Assistance Fair Hearing Procedures Temporary Amendment Act of 1996 (D.C. Law 11-205, April 9, 1997, law notification 44 DCR 2400).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Public Assistance Fair Hearing Procedures Emergency Amendment Act of 1996 (D.C. Act 11-313, August 2, 1996, 43 DCR 4363), § 2(a) of the Public Assistance Fair Hearing Procedures Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-424, October 28, 1996, 43 DCR 6139), § 2(a) of the Public Assistance Fair Hearing Procedures Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-481, December 30, 1996, 44 DCR 215), § 2(a) of the Public Assistance Fair Hearing Procedures Congressional Review Emer-

gency Amendment Act of 1997 (D.C. Act 12-24, March 3, 1997, 44 DCR 1776), and § 2(a) of the Public Assistance Fair Hearing Procedures Second Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-193, November 28, 1997, 44 DCR 7480).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-55. — Law 12-55, the “Public Assistance Fair Hearing Procedures Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-257, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-172 and transmitted to both Houses of Congress for its review. D.C. Law 12-55 became effective on February 27, 1998.

§ 4-210.11. Findings, conclusions, and recommendations by hearing officer.

(a) The hearing officer shall prepare a written summary of findings and conclusions based exclusively on the evidence presented at the hearing and shall make appropriate recommendations based upon his or her findings and conclusions. The summary of findings and conclusions shall state the policies, regulations, or laws upon which the hearing officer’s recommendations are based. Recorded testimony and exhibits, together with all papers and requests filed in the proceeding, and the hearing officer’s findings, conclusions, and recommendations will constitute the exclusive record for decision by the hearing authority, and will be available to the claimant at a place accessible to him or his representative at any reasonable time for a period not to exceed 2 years or until all litigation involving the decision is terminated. Nonrecorded or confidential information which the claimant does not have the opportunity to hear or see shall not be made a part of the hearing record nor used in a decision on the appeal. Hearings shall be transcribed if requested by the claimant, if ordered by the hearing officer, or for purposes of judicial review. All costs of transcription shall be borne by the Mayor.

(b) The hearing officer shall submit his or her written findings, conclusions, and recommendations, which shall at the same time be directly transmitted to the claimant, or his or her representative, with an explanation that such written findings, conclusions, and recommendations have been submitted to the Mayor’s agent and do not constitute the final decision of the Mayor’s agent.

(c) If the hearing officer recommends that the action of the Mayor’s agent be

sustained, the claimant shall be notified that he or she has 10 days after he or she receives the findings, conclusions, and recommendations in which to submit to the hearing officer any newly-discovered evidence he or she has in support of his or her position, and any objections, corrections, or exceptions he has to the findings and recommendations, and any brief that he or she or his or her counsel or representative may desire to submit. Newly-discovered evidence and objections, corrections, or exceptions submitted by the claimant within the 10-day period shall be reviewed and considered by the hearing officer who shall submit a supplemental recommendation to the Mayor's agent to sustain or not to sustain the action of the Mayor. The hearing officer may, in his or her discretion, reconvene the hearing for the purpose of taking further evidence. When the hearing officer recommends that the action of the Mayor not be sustained, the hearing record when completed shall be forwarded immediately for the decision of the Mayor's agent.

(Apr. 6, 1982, D.C. Law 4-101, § 1011, 29 DCR 1060; Feb. 27, 1998, D.C. Law 12-55, § 2(b), 44 DCR 6068.)

Prior Codifications. — 1981 Ed., § 3-210.11.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Public Assistance Fair Hearing Procedures Temporary Amendment Act of 1996 (D.C. Law 11-205, April 9, 1997, law notification 44 DCR 2400).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Public Assistance Fair Hearing Procedures Emergency Amendment Act of 1996 (D.C. Act 11-313, August 2, 1996, 43 DCR 4363), § 2(b) of the Public Assistance Fair Hearing Procedures Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-424, October 28, 1996, 43 DCR 6139), § 2(b) of the Public Assistance Fair Hearing Procedures Second Congressional

Review Emergency Amendment Act of 1996 (D.C. Act 11-481, December 30, 1996, 44 DCR 215), § 2(b) of the Public Assistance Fair Hearing Procedures Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-24, March 3, 1997, 44 DCR 1776), and § 2(b) of the Public Assistance Fair Hearing Procedures Second Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-193, November 28, 1997, 44 DCR 7480).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-55. — For legislative history of D.C. Law 12-55, see Historical and Statutory Notes following § 4-210.10.

§ 4-210.12. Final decision by Mayor's agent.

(a) The Mayor's agent shall render a final decision on the claimant's appeal no later than 60 days after the date of his or her initial request for a hearing. If, however, the date of the hearing is postponed at the claimant's request, or if the claimant submits new evidence following the close of his or her hearing, causing it to be reopened, the length of the postponement or the delay caused by the reopening may be added to the 60-day period.

(b) The Mayor's agent shall overrule the hearing officer in instances where he or she does not agree with findings, conclusions, or recommendations presented for decision. In such case, the reasons for the Mayor's agent's decision shall be specified in writing and shall be made a part of the hearing record.

(c) All decisions of the Mayor's agent shall be final and binding upon the Mayor and shall be put into effect immediately unless otherwise specifically indicated in the action. When the hearing decision is favorable to the claimant,

or when the Mayor's agent decides in favor of the claimant prior to the hearing, the Mayor's agent shall authorize corrected payments retroactively to the date the incorrect action was taken.

(Apr. 6, 1982, D.C. Law 4-101, § 1012, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3- legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-210.12.
Legislative history of Law 4-101. — For 201.01.

§ 4-210.13. Notification of decision and right to judicial review.

The Mayor's agent shall transmit his or her written decision and any further written statement required by § 4-210.12 to the claimant. If the decision is adverse to the claimant, the Mayor's agent shall notify him or her of his or her right to judicial review.

(Apr. 6, 1982, D.C. Law 4-101, § 1013, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3- legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-210.13.
Legislative history of Law 4-101. — For 201.01.

§ 4-210.14. Right to request hearing while absent from District.

A recipient shall have the same right to a hearing while absent from the District that he or she had while living in the District.

(Apr. 6, 1982, D.C. Law 4-101, § 1014, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3- legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-210.14.
Legislative history of Law 4-101. — For 201.01.

§ 4-210.15. File of hearing decisions.

The Mayor will maintain a file of all hearing decisions, with identifying information deleted, that will be accessible to claimants, their representatives, and other persons upon request to the Mayor.

(Apr. 6, 1982, D.C. Law 4-101, § 1015, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3- legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-210.15.
Legislative history of Law 4-101. — For 201.01.

§ 4-210.16. Class action permitted; correction or change in policy, construction, or interpretation.

(a) Where a request for hearing has been made on an action taken by the Mayor, and the hearing officer finds that the issue or policy involved directly affects or will affect other recipients or claimants similarly situated, the

hearing officer may, upon application by 1 of the recipients who is or will be so affected, allow a class action on behalf of the others similarly situated. The hearing officer, with the consent of the claimants, may consolidate hearings which present similar issues on his or her own motion or at the request of the claimants.

(b) Whenever a claimant challenges a departmental policy or the administrative construction or interpretation of relevant statutes, regulations, orders, or departmental directives, and his or her claim for relief is granted by the hearing officer and the Mayor's agent because of a misapplication of law contained in the policy, construction or interpretation, the Mayor will correct the challenged policy, construction or interpretation.

(c) Whenever the Mayor changes a policy, construction or interpretation, he or she shall immediately make a reasonable effort to find and notify all recipients affected thereby, and shall make appropriate adjustments in the welfare benefits or decisions of the Mayor which were based upon the erroneous policy or practice.

(Apr. 6, 1982, D.C. Law 4-101, § 1016, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(jjj), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-210.16.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(jjj) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(jjj) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(jjj) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(jjj) of the Self-Sufficiency

Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(jjj) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-210.17. Confidentiality.

If the claimant waives in writing his or her privilege of confidentiality as to the hearing, he or she shall be permitted by the Mayor to invite to the hearing any reasonable number of members of the public as he deems appropriate; provided, that the hearing officer may, in his discretion, considering the space and seating capacity of the room in which the hearing is to be held, impose limitations on the number of persons allowed to attend the same.

(Apr. 6, 1982, D.C. Law 4-101, § 1017, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-210.17.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-210.18. Notice provisions of § 4-205.54 applicable.

When the reduction or termination is the result of information contained in a periodic report the recipient has filed, or of the recipient's failure to file a report, or file a complete report, under § 4-205.54, then the Mayor is required to follow the notice provisions of that section.

(Apr. 6, 1982, D.C. Law 4-101, § 1018, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(kkk), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-210.18.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(kkk) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(kkk) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(kkk) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(kkk) of the Self-

Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(kkk) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-210.19. Assistance received during pendency of decision.

(a) Repealed.

(b) Assistance under the TANF, POWER, or GAC programs received pending a hearing decision shall be considered as an overpayment if the proposed action to change or terminate benefits is sustained.

(Apr. 6, 1982, D.C. Law 4-101, § 1019, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(u), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(III), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-210.19.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(u) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(u) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary

Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(III) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(u) of the General Public Assistance Program Termination Emergency Amendment Act

of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(u) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196),⁴ and see § 701(u) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(III) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(III) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(III) of the Self-Sufficiency Promotion Congressional

Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(III) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Subchapter XI. Miscellaneous Provisions Relating to Specific Payments.

§ 4-211.01. Home repairs — Run-down premises.

The Mayor may authorize an expenditure for repairs to a home which a recipient of TANF, POWER, or GAC owns or is buying, when there has been no assignment or transfer to the District of such property, if:

(1) A determination has been made that:

(A) The home is so defective that continued occupancy is not warranted;

(B) Unless repairs are made the recipient would have to move to rental quarters; and

(C) The rental cost of quarters for the recipient and his family over a period of 2 years would exceed the cost of repairs needed to make the home habitable together with other costs attributable to continued occupancy of the home; and

(2) There has been no expenditure for repairs prior to the determination described in paragraph (1) of this section.

(Apr. 6, 1982, D.C. Law 4-101, § 1101, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(v), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(mmm), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-211.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(v) of General Public Assistance

Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(v) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of sec-

tion, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(mmm) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(v) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(v) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(v) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency

Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(mmm) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(mmm) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(mmm) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(mmm) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-211.02. Home repairs — Protection of District interest. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1102, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(nnn), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-211.2.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(nnn) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(nnn) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(nnn) of the Self-Sufficiency Promotion Legislative Review Emergency

Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(nnn) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(nnn) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-211.03. Home repairs — Federal financial participation. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1103, 29 DCR 1060; Mar. 20, 1998, D.C. Law

12-60, § 701(w), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(ooo), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-211.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(ooo) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(ooo) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR

4270), § 2(ooo) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ooo) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ooo) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-211.04. Moving costs permitted.

The Mayor may pay moving costs when necessary to enable a recipient of public assistance to move into public or private housing.

(Apr. 6, 1982, D.C. Law 4-101, § 1104, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-211.4.

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

§ 4-211.05. Authorization of payment for moving costs.

The payment may be authorized:

(1) As a money payment to the recipient when he or she makes his or her own arrangements for moving; or

(2) As a vendor payment to the moving firm when arrangements must be made by the Mayor.

(Apr. 6, 1982, D.C. Law 4-101, § 1105, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-211.5.

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

§ 4-211.06. Prompt payment of disregarded sum. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1202, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(ppp), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-211.6.

see § 2(s) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

For temporary (225 day) amendment of sec-

tion, see § 2(ppp) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(ppp) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ppp) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ppp) of the Self-

Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ppp) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Subchapter XII. Payments to Incapacitated Individuals.

§ 4-212.01. Payment to incapacitated recipient.

Whenever a recipient has been found by the Mayor to be incapable of taking care of himself or herself, his or her property, or his or her money, and a person has been judicially appointed as legal representative, or a responsible person has been appointed by the Mayor, on behalf of such incapacitated individual for the purpose of receiving and managing such individual's public assistance payments (whether or not he is such individual's legal representative for other purposes), public assistance payments may be made on behalf of such individual to such judicially appointed legal representative, or to such responsible person appointed by the Mayor.

(Apr. 6, 1982, D.C. Law 4-101, § 1201, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-212.1.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-212.02. Protective or vendor payments on behalf of dependent children.

(a) The Mayor may authorize protective or vendor payments on behalf of dependent children under the following conditions:

(1) It has been clearly determined that the parent or relative persistently mismanages the assistance payment to the detriment of the child as evidenced by such factors as the improper clothing and feeding of the children, failure to pay rent resulting in repeated evictions, and other similar indications of money mismanagement.

(2) The individual selected as payee for the family has demonstrated his or her interest and concern in the welfare of the family, has the ability to establish and maintain a positive relationship and help the family to make proper use of the assistance payment, and is a responsible and dependable person. Members of the staff of the Mayor or persons whose selection might create a conflict of interest, such as grocers or landlords, shall not be selected as payees.

(3) A determination has been made as to what requirements, if any, will be met by vendor payments to persons providing goods and services with, to

the extent possible, the participation and consent of the caretaker in the assistance unit.

(b) The Mayor, with the cooperation of the payee, will undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(c) The cases of children for whom protective or vendor payments are being made shall be reviewed at least every 6 months to determine whether there is a need to continue such payments, or, if the relative is considered able to manage funds in the best interest of the children, whether assistance can be resumed as a direct money payment.

(d) Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, as follows:

(1) When caretakers are considered able to manage funds in the best interest of the child, there will be a return to money payment status.

(2) When it appears that need for protective payments or payments to a person furnishing goods or services will continue or is likely to continue beyond 1 year because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian, or other legal representative may be sought and such payments will terminate when the appointment has been made.

(e) An opportunity for a fair hearing will be given to the relative of the children with respect to the determination of whether a protective or vendor payment should be made or continued, the selection of the payee, or if foster care should be provided.

(f) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1202, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(qqq), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-212.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(qqq) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see

§ 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(qqq) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(qqq) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(qqq) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(qqq) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-212.03. Protective payments on behalf of adult recipients.

(a) The Mayor may authorize protective payments on behalf of adult recipients of public assistance under the following conditions:

(1) When there has been made clear determination that a needy individual has, by reason of physical or mental impairment, such inability to manage funds that making payments to him would be contrary to his or her welfare, as evidenced by his or her repeated failure to pay for rent and other essentials, exploitation of him or her in money matters by other persons, and medical or psychological reports indicating severe mental retardation, disorientation, or memory loss; and

(2) When the individual selected as payee has shown an interest in and concern for the welfare of the recipient, is accessible to the recipient, has the ability to establish and maintain a positive friendly relationship with the recipient, and is dependable and able to use the assistance payment in the best interests of the recipient. Members of the staff of the Mayor or persons whose selection might create a conflict of interest, such as grocers or landlords, shall not be selected as payees.

(b) The adult recipient shall be given the opportunity for a fair hearing with respect to any decision to make or continue protective payments or the selection of the payee.

(c) The Mayor will undertake and continue special efforts to improve, to the extent possible, the recipient's capacity for self-care and his or her ability to manage funds.

(d) Reconsideration of the need for protective payments shall be made as indicated by the recipient's circumstances and, in any event, at least every 6 months.

(e) The Mayor shall initiate court proceedings for the judicial appointment of a guardian or other legal representative whenever it appears that such an appointment will best serve the interests of the recipient.

(f) The Mayor shall authorize protective payments only when the Mayor can meet total need for all cases based on the current standards for requirements.

(g) Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1203, 29 DCR 1060; Mar. 20, 1998, D.C. Law 12-60, § 701(x), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(rrr), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-212.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(x) of Fiscal Year 1998 Revised

Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(rrr) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the General

Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(x) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(x) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(rrr) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(rrr) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(rrr) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment

Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(rrr) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Subchapter XIII. Actions for Support from Responsible Relatives.

§ 4-213.01. Action for support.

(a) Responsible relatives for any applicant or recipient of public assistance shall be limited to spouse for spouse, and parent for a child under the age of 21, and their financial responsibility shall be based upon their ability to pay. Any such applicant or recipient of public assistance or person in need thereof, or the Mayor, may bring an action to require such financially responsible spouse or parent to provide such support, and the Court shall have the power to make orders requiring such spouse or parent to pay such eligible applicant or recipient of public assistance such sums or sums of money in such installments as the Court in its discretion may direct, and such orders may be enforced in the same manner as orders for alimony.

(b) The Mayor may, on behalf of the District, sue such spouse or parent for the amount of public assistance granted to such recipient under this chapter or under any act repealed by this chapter, or for so much thereof as such spouse or parent is reasonably able to pay.

(c) All suits, actions, and court proceedings under this section shall be brought in the Family Division of the Superior Court of the District of Columbia, or in that Court division which may subsequently exercise the jurisdiction exercised by the Family Division on April 6, 1982. To the extent applicable, suits, actions, and proceedings brought pursuant to this section shall be governed by the provisions of Chapter 11 of Title 11 and Chapter 23 of Title 16.

(Apr. 6, 1982, D.C. Law 4-101, § 1301, 29 DCR 1060.)

Cross references. — Child support enforcement, withholding of income, see § 46-207.

Crediting of income tax refunds, persons determined to owe overdue child support, see

§ 47-4431.

Prior Codifications. — 1981 Ed., § 3-213.1.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

CASE NOTES

ANALYSIS

Adult child.

Desertion by spouse.

Families receiving welfare.

Jurisdiction.

Reimbursement.

Adult child.

Father had no legal obligation to provide for continued college education of daughter, who had been placed in custody of mother pursuant to separation agreement, after daughter reached majority. D.C. Code § 11-1141. *Spence v. Spence*, 266 A.2d 29, 1970 D.C. App. LEXIS 296 (App. 1970).

Father is not legally required to support and educate adult child, except as specified by statute where child is in need of public assistance or is hospitalized because of mental illness. D.C. Code §§ 3-218, 11-1141, 21-586. *Spence v. Spence*, 266 A.2d 29, 1970 D.C. App. LEXIS 296 (App. 1970).

Desertion by spouse.

Where wife had deserted the marital abode, burden was on District, in action by District of Columbia to recover from husband public assistance payments made by District for support of wife, to rebut presumption of wrongful desertion by establishing either that separation was by mutual consent, that separation was the fault of husband, or that wife was insane at time of separation. D.C. Code § 3-218. *Randolph v. District of Columbia*, 333 A.2d 380, 1975 D.C. App. LEXIS 333 (1975).

Families receiving welfare.

Aid to Families with Dependent Children

(AFDC) and AFDC cases can be treated alike under the District of Columbia Child Support Guideline (Appendix I of the Superior Court General Family Rules) by employing the Guideline which bases a support award on a formula applied to gross income and the ability to pay requirement of this section which is consistent with case law, thus avoiding any apparent conflict between these provisions. *District of Columbia ex rel. K.K. v. W.C.R.*, 116 WLR 2197 (Super. Ct. 1988).

Jurisdiction.

Where United States district court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in United States district court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support was to be brought in superior court. D.C. Code §§ 3-218(c), 21-586. *Randolph v. District of Columbia*, 333 A.2d 380, 1975 D.C. App. LEXIS 333 (1975).

Reimbursement.

Where the District has established that a parent is reasonably able to pay child support and that the child is being supported by public assistance, the court has no discretion under this section to refuse to order child support in some amount as reimbursement to the District. *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).

§ 4-213.02. Income scale exemptions. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1302, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(sss), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-213.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(sss) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of §§ 4-213.02 through 4-213.04, see

§ 2(sss) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(sss) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(sss) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(sss) of the Self-Sufficiency

Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For

legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-213.03. Basis for computation of contribution. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1303, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(sss), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-213.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(sss) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-213.02.

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-213.04. Dependents defined. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1304, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(sss), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-213.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(sss) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-213.02.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-213.05. Noncompliance by relative.

Whenever a responsible relative fails to provide information necessary to determine his ability to support, or when it has been determined that he is financially able to but has not contributed to the person in need of assistance, the case shall be evaluated for appropriate action including referral to Corporation Counsel.

(Apr. 6, 1982, D.C. Law 4-101, § 1305, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-213.5.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-213.06. Verification of ability to contribute.

The ability of responsible relatives to contribute shall be determined

through verification of earnings and other income at time of application, and whenever circumstances indicate the need to do so, but in no case less frequently than once every 12 months.

(Apr. 6, 1982, D.C. Law 4-101, § 1306, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-213.6. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.
Legislative history of Law 4-101. — For

*Subchapter XIV. District Claims of Support from Estates;
 Funeral Expenses.*

§ 4-214.01. Claim of District against estate of recipient; lien in favor of District; payment of share to United States.

(a) At the death of any person who has received public assistance in the form of Old Age Assistance, or Aid to the Disabled pursuant to the provisions of this chapter, or of any act repealed by this act, the District shall have a preferred claim for the amount of any such public assistance against the estate of the deceased recipient. Notwithstanding the provisions of any other law, no statute of limitations shall be deemed applicable as a defense to any claim of the District made pursuant to this section. The Mayor may waive any such claim when in his or her judgment he or she deems it appropriate to do so.

(b) In addition to the remedy provided by subsection (a) of this section, or by any other provision of law, the Mayor may file a notice in the Office of the Recorder of Deeds in any case where public assistance in the form of Old Age Assistance or Aid to the Disabled is granted to any person under this chapter, and such notice shall constitute and have the effect of a lien in favor of the District against the real and personal property of such person for the amount of such public assistance which theretofore has been granted or which may thereafter be granted to, or on behalf of, such persons. Any such lien may be enforced by the proceeding filed in the Superior Court of the District of Columbia. The Mayor shall file in the Office of the Recorder of Deeds a release of any such real and personal property from the effect of such lien wherever there has been repaid to the District the amount of the public assistance theretofore granted to, or on behalf of, such person. The Mayor is also authorized to release any such lien when in his or her judgment he or she deems it appropriate to do so. Such notices and release may be filed without payment of fees.

(c) If the District collects from any recipient of public assistance in the form of Old Age Assistance or Aid to the Disabled or from his estate, or otherwise, any amount with respect to public assistance furnished him or her under this chapter, the pro rata share to which the United States is equitably entitled shall be paid to the United States in accordance with the provisions of the Social Security Act, as amended (42 U.S.C. §§ 303, 603, 1203, 1353). The pro rata share due the District shall be deposited as miscellaneous receipts to the credit of the District.

(Apr. 6, 1982, D.C. Law 4-101, § 1401, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-214.1.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

References in text. — “This act,” referred to in the first sentence of subsection (a) of this section, is D.C. Law 4-101.

CASE NOTES

ANALYSIS

Liens.

Public assistance.

Liens.

Statute authorizing mayor to file notice constituting and having effect of lien in case in which public assistance in form of old-age assistance or aid to disabled is granted would be interpreted to permit District of Columbia to record lien when it assisted elderly or disabled through program directed to them as such, regardless of whether assistance was rendered in connection with specific federal programs for old-age assistance and aid to the disabled, although words were capitalized in 1986 version of the District Columbia Code. D.C. Code 1973, § 3-217(b); D.C. Code 1981, § 3-214.1(b). *Burt v. District of Columbia*, 525 A.2d 616, 1987 D.C. App. LEXIS 351 (1987).

Statute authorizing mayor to file notice constituting and having effect of lien in case in which public assistance in form of old-age assistance or aid to disabled is granted to any person authorized District of Columbia to place liens on homes of elderly and disabled persons who received public assistance through programs specifically targeted at such persons, including mortgage assistance program. D.C. Code 1973, § 3-217(b); D.C. Code 1981, § 3-

214.1(b). *Burt v. District of Columbia*, 525 A.2d 616, 1987 D.C. App. LEXIS 351 (1987).

District of Columbia was not precluded from placing liens on homes of elderly and disabled homeowners who District of Columbia provided mortgage assistance to on condition they allowed District to record and enforce lien on their property on theory mortgage assistance payments were not authorized, where mayor had statutory authority to file notice constituting and having effect of lien in any case in which public assistance in form of old-age assistance or aid to disabled was granted; making of loans triggered mayor's statutory authority regardless of whether mortgage assistance payments themselves were authorized. D.C. Code 1973, § 3-217(b); D.C. Code 1981, § 3-214.1(b). *Burt v. District of Columbia*, 525 A.2d 616, 1987 D.C. App. LEXIS 351 (1987).

Public assistance.

Mortgage assistance payments made to elderly or disabled homeowners were “public assistance” contemplated by statute authorizing mayor to file notice constituting and having effect of lien in case in which “public assistance” in form of old-age assistance or aid to disabled is granted. D.C. Code 1973, §§ 3-201, 3-217(b); D.C. Code 1981, §§ 3-201.1, 3-214.1(b). *Burt v. District of Columbia*, 525 A.2d 616, 1987 D.C. App. LEXIS 351 (1987).

§ 4-214.02. Funeral expenses — Payment permitted. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1402, 29 DCR 1060; May 10, 1989, D.C. Law 7-231, § 13, 36 DCR 492; Aug. 1, 1996, D.C. Law 11-152, § 101, 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 3-214.2.

Emergency legislation. — For temporary repeal of section, see § 2(b) of the Emergency and Public Assistance Emergency Amendment Act of 1996 (D.C. Act 11-277, May 29, 1996, 43 DCR 2971).

For temporary repeal of section, see § 101(b)

of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 4-205.52.

§ 4-214.03. Funeral expenses — Indigent residents; wards of District.

The Mayor, pursuant to § 4-214.04, may provide for the payment of funeral and burial expenses of children in foster care and persons committed to the Youth Services Administration, Department of Human Services.

(Apr. 6, 1982, D.C. Law 4-101, § 1403, 29 DCR 1060; Aug. 1, 1996, D.C. Law 11-152, § 101(c), 43 DCR 2978; Mar. 24, 1998, D.C. Law 12-81, § 7, 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 3-214.3.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Emergency and Public Assistance Emergency Amendment Act of 1996 (D.C. Act 11-277, May 29, 1996, 43 DCR 2971).

For temporary amendment of section, see § 101(c) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 4-205.52.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 4-214.04. Funeral allowance.

The family of the deceased may choose a funeral director or establishment to provide a funeral service from a list of forms that have signed agreements with the Mayor to provide such services. The Mayor shall pay a maximum of \$450.00 for a complete funeral service including the burial plot.

(Apr. 6, 1982, D.C. Law 4-101, § 1404, 29 DCR 1060; Sept. 26, 1995, D.C. Law 11-52, § 502(i), 42 DCR 3684; Aug. 1, 1996, D.C. Law 11-152, § 101(d), 43 DCR 2978; Apr. 9, 1997, D.C. Law 11-255, § 8(b), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 3-214.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 2(e) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 502(i) of the Omnibus Budget Support Con-

gressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 2(d) of the Emergency and Public Assistance Emergency Amendment Act of 1996 (D.C. Act 11-277, May 29, 1996, 43 DCR 2971).

For temporary amendment of section, see § 101(d) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-204.06.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 4-205.52.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 4-205.11.

Subchapter XV. Assignment of Public Assistance Prohibited.

§ 4-215.01. Prohibition; immunity from legal process.

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law.

(Apr. 6, 1982, D.C. Law 4-101, § 1501, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-215.1.

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 4-101. — For

CASE NOTES

Standing.

Hospital did not have third-party standing to challenge on behalf of its former patients retroactive determination by District of Columbia Department of Health denying Medicaid coverage to hospital's former patients; hospital's asserted injury, its potential debt to the District, had no relation to the supposed dispute between the Department and the affected Medicaid recipients, and hospital did not have a

concrete interest in the outcome of a dispute between the Department and the Medicaid recipients, because neither District nor federal law authorized the Department to seek reimbursement from hospital's former patients and thus there was no dispute to have a concrete interest in. *Riverside Hosp. v. D.C. Dep't of Health*, 944 A.2d 1098, 2008 D.C. App. LEXIS 110 (2008).

Subchapter XVI. Record Keeping Requirements.

§ 4-216.01. Mayor to prescribe regulations.

(a) Consistent with § 4-209.04, the Mayor is directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Mayor relating to public assistance. Except as otherwise provided, these regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of, public assistance to purposes directly connected with the administration of public assistance.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this section shall use such information for commercial or political purposes.

(c) This section and § 4-218.02 shall be construed as state legislation conforming to the requirements of 42 U.S.C. § 1306a.

(Apr. 6, 1982, D.C. Law 4-101, § 1601, 29 DCR 1060; Sept. 10, 1985, D.C. Law

6-35, § 2(q), 32 DCR 3778; Apr. 20, 1999, D.C. Law 12-241, § 2(ttt), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-216.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(ttt) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(ttt) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(ttt) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(ttt) of the Self-Sufficiency Promotion Congressional Review Emer-

gency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(ttt) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Subchapter XVII. Foster Care.

§ 4-217.01. Requirements for benefits.

The Mayor shall, effective July 1, 1969, provide Aid to Dependent Children in the form of foster care when removal of a child from the home of a parent or relative results from judicial determination that continuation in such home is contrary to the child's welfare, provided:

(1) The child was eligible for Aid to Families with Dependent Children under District and federal law in effect on July 16, 1996 in or for the month in which court proceedings leading to such a determination were initiated; or

(2) The child was living with a relative within 6 months prior to the month such proceedings were initiated and would have been eligible under such law had application been made in his behalf.

(Apr. 6, 1982, D.C. Law 4-101, § 1701, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(uuu), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(t) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(t) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(uuu) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(t) of the Public

Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(t) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(t) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(uuu) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(uuu) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(uuu) of the Self-Sufficiency Promo-

tion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(uuu) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.02. Types of placement.

Foster care shall be provided in a foster family home or in a child-care institution, whichever best meets the needs of the individual child. The Mayor, in providing such care, may use foster family homes and child-care institutions outside the District of Columbia, provided that such homes and institutions are licensed by the state in which they are located or are approved to meet the standards established by the state for such foster family homes or institutions.

(Apr. 6, 1982, D.C. Law 4-101, § 1702, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-217.2.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.03. Administration of benefits.

The Mayor shall:

(1) Review the plan for each child periodically, but no less frequently than once each year, to assure that he receives proper care and to determine the appropriateness and continued need for placement; and

(2) Provide services which are designed to improve conditions in the home from which the child was removed and effect his return, or otherwise to make possible his being placed in the home of a relative as specified in title IV of the Social Security Act (42 U.S.C. § 601 et seq.).

(Apr. 6, 1982, D.C. Law 4-101, § 1703, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-217.3.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.04. Federal financial participation.

The Mayor shall claim federal financial participation for foster care payments to the fullest extent permissible under the provisions of title IV of the Social Security Act (42 U.S.C. § 601 et seq.).

(Apr. 6, 1982, D.C. Law 4-101, § 1704, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-217.4.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.05. Determination of need.

(a) The Mayor, in determining the need for public assistance, shall permit:

(1) Repealed.

(2) Applicants for, or recipients of, TANF to retain resources up to the maximum allowable amount of resources that would be permitted to be retained by a household under the Food Stamp Program established pursuant to the Food Stamp Act of 1977, approved September 29, 1977 (91 Stat. 958; 7 U.S.C. § 2011 et seq.) ("Food Stamp Program"), if the Food Stamp household were composed of the members of the TANF assistance unit.

(3) If any real or personal property, including liquid assets, is jointly owned by a member of an assistance unit and another person who is not a member of an assistance unit, the value shall be divided equally among the co-owners and only the portion of the assistance unit member(s) shall be considered as available.

(b) The following shall not be considered resources for the purposes of determining the resources of applicants or recipients of TANF under subsection (a) (2) of this section:

(1) The value of a home which is the usual residence of the assistance unit;

(2) The value of a licensed vehicle, to the extent permitted under the Food Stamp Program to a household composed of the same members as constitute the TANF assistance unit.

(3) The value of 1 burial plot for each member of the assistance unit. The Mayor shall define the term "burial plot" for the purpose of this exclusion.

(4) The equity value of bona fide funeral agreements, up to a total of \$1,500 per person, for each member of the assistance unit;

(5) Real property, for a period of 9 months, that the family unit is making a good faith effort to sell if the family agrees to sign an agreement to dispose of the property and to use the proceeds of the sale to repay any TANF benefits it would not have received if the property had been sold at the beginning of the period. The family will not have to repay an amount greater than the net proceeds from the sale. If there are any remaining proceeds, these proceeds shall be considered a resource. If the property has not been sold within the specified time period, or eligibility stops for any other reason, the entire amount of aid paid during the period shall be treated as an overpayment. The Mayor shall define "good faith effort" for the purpose of this exclusion; and

(6) Basic maintenance items essential to day-to-day living, as defined by the Mayor.

(Apr. 6, 1982, D.C. Law 4-101, § 1705, 29 DCR 1060; Mar. 14, 1985, D.C. Law 5-150, § 2(h), 31 DCR 6425; Sept. 10, 1985, D.C. Law 6-35, § 2(r), 32 DCR 3778; Mar. 20, 1998, D.C. Law 12-60, § 701(y), 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 2(vvv), 46 DCR 905; Mar. 2, 2007, D.C. Law 16-191, § 91(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 3- 191, in the lead-in language and par. (5) of
217.5. subsec. (b), substituted "TANF" for "AFDC".

Effect of amendments. — D.C. Law 16- **Temporary Amendment of Section.** —

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(y) of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 701(y) of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(vvv) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(y) of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 701(y) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 701(y) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emer-

gency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(vvv) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(vvv) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(vvv) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(vvv) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 5-150. — For legislative history of D.C. Law 5-150, see Historical and Statutory Notes following § 4-205.05.

Legislative history of Law 6-35. — For legislative history of D.C. Law 6-35, see Historical and Statutory Notes following § 4-202.05.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

CASE NOTES

Burial funds.

The court, when examining requests for guardianship fund payments, will ignore a burial fund if it is within the maximum amount

allowable under the District of Columbia and federal public assistance regulations. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

§ 4-217.06. Monies applied to purchase of essential article. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1706, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(www), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.6.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(www) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(www) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(www) of the Self-Sufficiency Promotion Legislative Review Emergency

Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(www) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(www) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.07. Condition of eligibility — Social Security number; assignment of support rights.

As a condition of eligibility, each applicant for or recipient of aid, including each child under the TANF or foster care programs operated pursuant to part A of title IV of the Social Security Act (42 U.S.C. § 601 et seq.) shall be required to:

(1) Furnish to the Mayor a Social Security account number, or to apply for a Social Security number if such a number has not been issued or is not known; and

(2) Assign to the District of Columbia support rights, consistent with § 4-205.19(b) and (c).

(Apr. 6, 1982, D.C. Law 4-101, § 1707, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(xxx), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.7.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(xxx) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see

§ 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(xxx) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(xxx) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(xxx) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(xxx) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.08. Condition of eligibility — Cooperation in identifying and locating parents, establishing paternity, obtaining support payments, and other payments.

(a) As a condition of eligibility for assistance under programs specified in § 4-217.07, unless good cause for refusing to cooperate is determined to exist pursuant to § 4-217.09, each applicant for, or recipient of, assistance shall be required to cooperate in good faith with the District of Columbia in:

(1) Identifying and locating the absent parent of a child with respect to whom an applicant or recipient requests or obtains assistance;

(2) Establishing the paternity of a child born out of wedlock with respect to whom an applicant or recipient requests or obtains assistance;

(3) Establishing a support order for a child with respect to whom an applicant or recipient requests or obtains assistance;

(4) Modifying any support order for a child with respect to whom an applicant or recipient requests or obtains assistance;

(5) Enforcing any support order for a child with respect to whom an applicant or recipient requests or obtains assistance; and

(6) Obtaining any other payment or property due the applicant, recipient, or child with respect to whom an applicant or recipient requests or obtains assistance.

(b) Before requiring cooperation under this section, the Mayor shall notify the applicant or recipient in writing of the right to be excepted from the requirement upon a showing of good cause. The notice shall include each requirement applicable to a good cause determination, and facts concerning the benefits, risks, and consequences of cooperation and pursuing child support.

(c) If the Mayor determines an applicant or recipient has failed to cooperate as required by subsection (a) of this section, without good cause, the IV-D agency shall promptly notify the applicant or recipient. The IV-D agency shall provide the basis for its determination of noncooperation in writing as part of the notice to the applicant or recipient.

(d) Any applicant or recipient aggrieved by the action or inaction of the Mayor regarding the determination of cooperation, noncooperation, or good cause for refusal to cooperate shall be entitled to a hearing. Hearing rights shall be provided in accordance with subchapter X of this chapter.

(e) Each District of Columbia government agency involved in the administration of public assistance or the enforcement of child support obligations under title IV-D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.) shall make reasonable efforts to ensure that the applicant's, recipient's, or child's whereabouts are kept confidential and take other reasonable measures, within the agency's scope of authority, that are necessary to protect the applicant or recipient and the child from harm in any case in which:

(1) A claim of good cause for noncooperation is pending;

(2) A claim of good cause for noncooperation has been granted;

(3) A civil protection order or temporary protection order has been entered with respect to the applicant, recipient, or the child with respect to whom assistance is claimed; or

(4) The Mayor has reason to believe that the release of the information may result in harm to the applicant or recipient or the child.

(Apr. 6, 1982, D.C. Law 4-101, § 1708, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(yyy), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.8.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(u) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(u) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(yyy) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(u) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(u) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see

§ 2(u) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(yyy) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(yyy) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(yyy) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(yyy) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.09. Condition of eligibility — Exception to cooperation.

(a) An applicant for or recipient of aid shall be required to comply with the requirements of § 4-217.08, unless such applicant or recipient is found to have good cause for refusing to so cooperate as determined by the Mayor, in accordance with standards prescribed by the Mayor, and which standards shall take into consideration the best interests of the child on whose behalf aid is claimed.

(b) The Mayor shall make a timely determination of whether good cause exists.

(c) The agency administering assistance shall promptly report any information to the IV-D agency that is provided by the applicant or recipient that relates to a good cause determination.

(d) Assistance shall not be denied, delayed, reduced, or discontinued pending a determination of good cause for refusal to cooperate if the applicant or recipient has made a good faith effort to substantiate the claim.

(e) An applicant or recipient may claim good cause for noncooperation at any time. An applicant's or recipient's decision not to claim good cause shall not preclude the applicant or recipient from claiming good cause at a later date.

(Apr. 6, 1982, D.C. Law 4-101, § 1709, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(zzz), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.9.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(v) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(v) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(zzz) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(v) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(v) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see

§ 2(v) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(zzz) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(zzz) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(zzz) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(zzz) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.10. Condition of eligibility — Effect of failure to comply.

(a) If an applicant or recipient claims good cause for noncooperation under § 4-217.09 and the Mayor determines that good cause does not exist, the applicant or recipient shall be notified and given an opportunity to cooperate, to withdraw the application for assistance, or to have the assistance case closed. Refusal to cooperate, after such notice and opportunity to cooperate, shall result in imposition of the sanctions provided in subsection (b) of this section.

(b) If an applicant for, or recipient of, assistance, who is the parent of the child with respect to whom assistance is claimed, fails to cooperate as required by § 4-217.08, and the Mayor has determined under § 4-217.09 that the applicant or recipient does not have good cause for noncooperation, the amount of the applicant's or recipient's public assistance grant shall be reduced by 25%.

(c) If the applicant or recipient complies with § 4-217.08 after a determination of noncooperation, the IV-D agency shall promptly notify the agency administering assistance for the family. The agency administering assistance shall restore assistance to the applicant or recipient in the month following the date of cooperation.

(Apr. 6, 1982, D.C. Law 4-101, § 1710, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(aaaa), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-217.10.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(w) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(w) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(aaaa) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(w) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(w) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(w) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see

§ 2(aaaa) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(aaaa) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(aaaa) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), § 2(aaaa) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

§ 2(aaaa) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-217.11. Condition of eligibility — Protective or vendor payments.

If the relative with whom the child is living is found to be ineligible for assistance because of failure to comply with conditions of §§ 4-217.08 and 4-217.09, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) shall be provided in the form of protective or vendor payments.

(Apr. 6, 1982, D.C. Law 4-101, § 1711, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-217.11.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Subchapter XVIII. Criminal Provisions.

§ 4-218.01. Fraud in obtaining public assistance; repayment; liability of family members; penalties.

(a) Any person who, with the intent to defraud, by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain: (1) any grant or payment of public assistance to which he is not entitled; (2) a larger amount of public assistance than that to which he or she is entitled; (3) payment of any forfeited grant of public assistance; or (4) a public assistance identification card; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall

be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than \$500, or to imprisonment not to exceed one year, or both.

(b) Any person who for any reason obtains any payment of public assistance to which he is not entitled, or in excess of that to which he is entitled, shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment of General Public Assistance required by this subsection may, in the discretion of the Mayor, be waived in whole or in part, upon a finding by the Mayor that such repayment would deprive such person, his spouse, parent, or child of shelter or subsistence needed to enable such person, spouse, parent, or child to maintain a minimum standard of health and well-being. Collections of overpayments from TANF, POWER, or former Aid to Families with Dependent Children or former GPA recipients shall be made in accordance with rules promulgated by the Mayor.

(c) Any person who is a member of a family that applies for or receives TANF or POWER and who is found, by a federal or District of Columbia court or pursuant to an administrative hearing, on the basis of a plea of not guilty or nolo contendere or otherwise, to have intentionally:

(1) Made a false or misleading statement or misrepresented, concealed, or withheld facts; or

(2) Committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity for the purpose of establishing or maintaining the eligibility of the family for aid or of increasing or preventing a reduction in the amount of the aid shall have his or her needs removed from the grant for a period of 6 months upon the first offense, 12 months upon the second offense, and permanently upon the third or a subsequent offense.

(d) The Mayor shall impose the disqualification penalties set forth in subsection (c) of this section upon any person who is a member of a family that applies for or receives TANF or POWER and who is found, after an administrative hearing, to have violated subsection (c) of this section, provided that only the person convicted of fraud shall be penalized and not the entire applicant family unit.

(e) The Mayor shall provide each applicant for TANF or POWER a written notice of the penalties for a finding of fraud pursuant to subsection (c) of this section at the time of his or her application for TANF or POWER.

(Apr. 6, 1982, D.C. Law 4-101, § 1801, 29 DCR 1060; June 30, 1989, D.C. Law 8-14, § 2, 36 DCR 3693; Aug. 17, 1991, D.C. Law 9-27, § 2(l), 38 DCR 4205; Apr. 20, 1999, D.C. Law 12-241, § 2(bbbb), 46 DCR 905; Apr. 20, 1999, D.C. Law 12-254, § 2(a), 46 DCR 1276.)

Prior Codifications. — 1981 Ed., § 3-218.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 101(l) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of sec-

tion, see § 2(x) of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2(x) of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2(bbbb) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 101(l) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

For temporary amendment of section, see § 101(l) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), and § 2(x) of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181).

For temporary amendment of section, see § 2(x) of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2(bbbb) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(bbbb) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(bbbb) of the Self-Sufficiency Promotion

Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(bbbb) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 8-14. — Law 8-14, the “Public Assistance Act of 1982 Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-73, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 18, 1989 and May 2, 1989, respectively. Signed by the Mayor on May 12, 1989, it was assigned Act No. 8-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-27. — For legislative history of D.C. Law 9-27, see Historical and Statutory Notes following § 4-205.05a.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-254. — Law 12-254, the “Food Stamp Trafficking and Public Assistance Fraud Control Act of 1998,” was introduced in Council and assigned Bill No. 12-520, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-602 and transmitted to both Houses of Congress for its review. D.C. Law 12-254 became effective on April 20, 1999.

CASE NOTES

ANALYSIS

Evidence.

Multiple offenses.

Recoupment rate.

Statute of limitations.

Evidence.

Evidence was sufficient to establish beyond a reasonable doubt that defendant had requisite intent to defraud District of Columbia of welfare payments and was sufficient to sustain conviction for welfare fraud; defendant applied for public assistance, failed to report income which she had received from employer and falsely indicated she had no income on hand and no money in credit union account. D.C. Code 1981, § 3-218.1. *Abdulshakur v. District of Columbia*, 589 A.2d 1258, 1991 D.C. App. LEXIS 92 (1991).

Even if nonentitlement was an element of

offense of welfare fraud, evidence was sufficient to show that defendant received funds to which she was not entitled and was sufficient to sustain conviction; defendant tried to obtain more welfare money than any amount properly payable to her. D.C. Code 1981, § 3-218.1(a). *Abdulshakur v. District of Columbia*, 589 A.2d 1258, 1991 D.C. App. LEXIS 92 (1991).

Multiple offenses.

Continuing offense charge of welfare fraud and two other counts which were based upon individual incidents of defendant providing false address to Department of Human Services (DHS) violated Double Jeopardy Clause; when defendant provided false address to DHS on dates that were basis for individual incident charges, she simultaneously failed to disclose her correct address, the basis for continuing offense charge, and, thus, criminal acts were inextricably intertwined, and there was no ap-

preciable length of time between the simultaneous acts or a separate criminal impulse to establish sufficient separation between the acts. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

Multiple misrepresentations resulting in receipt of multiple payments of public assistance for which defendant was ineligible constituted multiple offenses, where defendant made misrepresentations on three different forms, each form applying to different period of time, and she told different lies about her finances in completing each form. D.C. Code 1981, § 3-218.1. *Abdulshakur v. District of Columbia*, 589 A.2d 1258, 1991 D.C. App. LEXIS 92 (1991).

Recoupment rate.

District of Columbia did not engage in "rulemaking" within context of Administrative Procedure Act by withholding 10% of AFDC recipient's monthly grant to recoup prior over-

payment, pursuant to federal regulation, and thus, uniformly applied 10% recoupment rate was effective without compliance with Act, where District failed to adopt lower rate, but merely acted pursuant to ceiling rate in federal regulation. D.C. Code 1981, §§ 1-1502(6, 7), 1-1506. *Boyd v. District of Columbia Dep't of Human Services*, 524 A.2d 744, 1987 D.C. App. LEXIS 335 (1987).

Statute of limitations.

Twenty-two-days was reasonable time for discovery of welfare fraud, and, thus, statute of limitations had not started to run when defendant was charged with welfare fraud. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

Statute of limitations had not started running on continuing welfare fraud until offense was completed when benefits were terminated. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

§ 4-218.02. Penalty for violation of § 4-218.01(b); prosecutions.

Any person violating § 4-218.01(b) shall be punished by a fine of not more than \$500, or by imprisonment of not more than 90 days, or by both such fine and imprisonment. Prosecutions for such violations and for violations of § 4-218.01(a) shall be brought to the Superior Court of the District of Columbia by the Corporation Counsel or any of his or her assistants.

(Apr. 6, 1982, D.C. Law 4-101, § 1802, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-218.2.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

CASE NOTES

Multiple offenses.

Multiple misrepresentations resulting in receipt of multiple payments of public assistance for which defendant was ineligible constituted multiple offenses, where defendant made misrepresentations on three different forms, each

form applying to different period of time, and she told different lies about her finances in completing each form. D.C. Code 1981, § 3-218.1. *Abdulshakur v. District of Columbia*, 589 A.2d 1258, 1991 D.C. App. LEXIS 92 (1991).

§ 4-218.03. Unauthorized use of identification card.

Any person who sells any card or document issued by the District government to establish or verify eligibility for public assistance, or otherwise permits any person other than the recipient to whom it was issued to use such card or document to obtain public assistance which such user is not otherwise eligible to receive, shall be fined not more than \$500, or imprisoned for not longer than one year, or both.

(Apr. 6, 1982, D.C. Law 4-101, § 1803, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(cccc), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-218.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(cccc) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(cccc) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(cccc) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(cccc) of the Self-

Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(cccc) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

§ 4-218.04. Prosecutions; subpoenas; witness fees; perjury; compulsion of obedience to subpoena; oaths.

(a) In addition to any power to bring criminal or civil actions or otherwise carry out the duties under this chapter, the Corporation Counsel shall have the authority to issue subpoenas for a witness to appear and testify or to produce all books, records, papers, or documents in any investigation into alleged violations of this chapter.

(b) A witness, other than those employed by the District of Columbia, summoned under subsection (a) of this section shall be paid the same fees and mileage that a witness is paid in the Superior Court of the District of Columbia ("Superior Court"), but the fees need not be tendered to the witness before he or she appears and testifies or produces books, records, papers, or documents.

(c) Any willful false swearing on the part of any witness testifying about a material fact pursuant to a subpoena issued under subsection (a) of this section shall be subject to prosecution pursuant to Chapter 24 of Title 22.

(d) If any witness, who has been personally summoned, neglects or refuses to obey the subpoena, the Corporation Counsel may report this fact to the Superior Court. The Superior Court may compel obedience to the subpoena to the same extent as a witness may be compelled to obey the subpoenas of that court.

(e) The Corporation Counsel may administer oaths to any witness summoned in any investigation under subsection (a) of this section.

(Apr. 6, 1982, D.C. 4-101, § 1804, as added Apr. 20, 1999, D.C. Law 12-254, § 2(b), 46 DCR 1276.)

Prior Codifications. — 1981 Ed., § 3-218.4.

Legislative history of Law 12-254. — For

legislative history of D.C. Law 12-254, see Historical and Statutory Notes following § 4-218.01.

§ 4-218.05. Penalties.

(a) Any person who knowingly uses, transfers, acquires, alters, purchases, possesses, or transports one or more food stamp coupons or access devices in a manner not authorized by the Food Stamp Act of 1964, approved August 31, 1964 (78 Stat. 703; 7 U.S.C. § 2011 et seq.) (“Food Stamp Act”), or by regulations issued pursuant to that Act; shall be guilty of a misdemeanor, and upon conviction thereof shall be fined no more than \$1,000 or imprisoned for not more than 180 days, or both.

(b) In addition to the penalty in subsection (a) of this section, any person convicted of a misdemeanor under this section shall be subject to suspension by the Superior Court from participation in the District of Columbia food stamp program for a period of one year consecutive to that period of suspension mandated by section 6(b)(1) of the Food Stamp Act (7 U.S.C. § 2015(b)(1)).

(c) Prosecution under this section shall be conducted in the Superior Court by the Corporation Counsel.

(d) For purposes of this section, the term:

(1) “Access device” means any card, plate, code, account number, or other means of access, which can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or which can be used to initiate a transfer of funds under the Food Stamp Act or regulations issued pursuant to this section.

(2) “Food stamp coupon” means a coupon issued by the United States Department of Agriculture pursuant to the Food Stamp Act or regulations issued pursuant to the Food Stamp Act.

(3) “Person” means an individual, firm, partnership, group, corporation, institution, agency, or other entity, public or private.

(Apr. 6, 1982, D.C. 4-101, § 1805, as added Apr. 20, 1999, D.C. Law 12-254, § 2(c), 46 DCR 1276.)

Prior Codifications. — 1981 Ed., § 3-218.5. legislative history of D.C. Law 12-254, see Historical and Statutory Notes following § 4-218.01.

Legislative history of Law 12-254. — For

CASE NOTES

Construction with other laws.

Charge of continued unlawful use of food stamps was not multiplicitous of charges for welfare fraud, although crimes occurred during same time period; statute which prohibited welfare fraud required element of false state-

ment or failure to disclose information which statute that prohibited unlawful use of food stamps did not. *Harris v. District of Columbia*, 991 A.2d 1199, 2010 D.C. App. LEXIS 147 (2010).

§ 4-218.06. Suspension, revocation, or denial of a business license or permit.

(a) The Mayor is authorized to suspend, revoke, or deny the issuance or renewal of any business license or permit of any person or entity convicted of food stamp trafficking under this section, the Food Stamp Act, or regulations issued pursuant to the Food Stamp Act.

(b) Prior to the suspension, revocation, or denial of any business license or permit, the affected party shall be given notice, and shall be offered an opportunity to present evidence, and to be heard concerning the proposed action.

(c) In any hearing pursuant to subsection (b) of this section, a conviction shall create a presumption that the person or entity convicted of food stamp trafficking is unfit to hold the business license or permit at issue.

(Apr. 6, 1982, D.C. 4-101, § 1806, as added Apr. 20, 1999, D.C. Law 12-254, § 2(d), 46 DCR 1276.)

Prior Codifications. — 1981 Ed., § 3-218.6. legislative history of D.C. Law 12-254, see Historical and Statutory Notes following § 4-218.01.
Legislative history of Law 12-254. — For

Subchapter XIX. Appropriations.

§ 4-219.01. Authorization.

(a) The Mayor shall include in his or her annual estimates of appropriations such sums as may be needed to carry out the provisions of this chapter.

(b) Unobligated balances of appropriations for the Department of Human Services, established by Reorganization Plan No. 2 of 1979, are made available for the purposes of this chapter.

(Apr. 6, 1982, D.C. Law 4-101, § 1901, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-219.1. legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.
Legislative history of Law 4-101. — For

§ 4-219.02. Disbursement of expenses. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-101, § 1902, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-219.2. Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(dddd) of the Self-Sufficiency Promotion Congressional Review

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(dddd) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(dddd) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(dddd) of the Self-Sufficiency Promotion Legislative Review Emergency

Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(dddd) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Subchapter XX. Nonrevival of Previously Repealed or Superseded Public Enactments; Nonabatement of Causes of Action.

§ 4-220.01. Nonrevival of previously repealed or superseded laws, acts, regulations, Commissioner's orders, Commissioners' orders, and administrative orders; effect of amendments.

(a) The provisions of this subchapter shall not cause the revival of any law, act, regulation, Commissioner's order, Commissioners' order, or administrative order (for the purposes of this subchapter and Title XXIII, "public enactment") previously repealed or superseded.

(b) Any amendment to a law effected by a law, act, regulation, Commissioner's order, Commissioners' order, or administrative order in § 2101 of D.C. Law 4-101 to a public enactment not therein contained shall be considered as having been made on the date of the original enactment of such public enactment and shall continue in effect.

(c) Public enactments repealed by § 2101 of D.C. Law 4-101 shall be considered to have been in effect from their date of original enactment until April 6, 1982, as provided in title XXIII.

(Apr. 6, 1982, D.C. Law 4-101, § 2102, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-220.1.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

References in text. — "Title XXIII," referred to in subsections (a) and (c) of this section, is Title XXIII of the Act of April 6, 1982, D.C. Law 4-101, which contained a disposition table of prior public enactments regarding public assistance programs. D.C. Law 4-101 was an

attempt to draw together without substantive change a variety of prior enactments, many of which had never been codified. D.C. Law 4-101 repealed the following public enactments: Chapter 2 of Title 4 of the D.C. Code; certain uncoded D.C. Laws which included 1-74, 1-92, 1-108, and 3-3; certain sections of Act 4-133; and all or portions of certain regulations which included 68-20, 68-28, 68-28a, 69-1, 69-3, 69-19, 69-23, 69-24, 69-26, 69-27, 69-29, 69-30, 69-37, 69-40, 69-49, 69-50, 69-58, 69-59, 70-9, 70-12, 70-29, 71-2, 71-24, 71-29, and 72-17.

§ 4-220.02. Nonabatement of causes of action.

The enactment of this chapter shall not cause the abatement of any causes of action affecting public enactments repealed by this title.

(Apr. 6, 1982, D.C. Law 4-101, § 2103, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-220.2.

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

References in text. — "This title," referred to at the end of this section, is title XXI of D.C. Law 4-101.

§ 4-220.03. No new rights or entitlements created; exception.

No new rights or entitlements are created by this chapter.

(Apr. 6, 1982, D.C. Law 4-101, § 2104, 29 DCR 1060; Apr. 20, 1999, D.C. Law 12-241, § 2(eeee), 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-220.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(eeee) of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 2(eeee) of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 2(eeee) of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 2(eeee)

of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 2(eeee) of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 4-101. — For legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Subchapter XXI. Severability.

§ 4-221.01. Severability.

Should a court of competent jurisdiction hold any provision of this chapter to be invalid, then the remaining provision of the chapter shall be considered to be severable and given full effect.

(Apr. 6, 1982, D.C. Law 4-101, § 2201, 29 DCR 1060.)

Prior Codifications. — 1981 Ed., § 3-221.1.

Legislative history of Law 4-101. — For

legislative history of D.C. Law 4-101, see Historical and Statutory Notes following § 4-201.01.

CHAPTER 2A. GRANDPARENT CAREGIVERS PILOT PROGRAM.

Sec.

4-251.01. Definitions.

4-251.02. Establishment of program to provide subsidies for grandparent caregivers.

4-251.03. Eligibility.

Sec.

4-251.04. Subsidies.

4-251.05. Reports.

4-251.06. Rules.

4-251.07. Construction.

§ 4-251.01. Definitions.

For the purposes of this chapter, the term:

(1) “Criminal background check” means the investigation of an individual’s criminal history through the record systems of the Federal Bureau of Investigation and the Metropolitan Police Department.

(2) “Grandparent” means a grandparent, great-grandparent, great-aunt, and great-uncle of a child.

(3) “Mayor” means the Mayor or a designee of the Mayor.

(4) “Temporary Assistance for Needy Families” or “TANF” means the Temporary Assistance for Needy Families program established by § 4-202.01.

(Mar. 8, 2006, D.C. Law 16-69, § 101, 53 DCR 54.)

Emergency legislation. — For temporary (90 day) addition, see § 101 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

Legislative history of Law 16-69. — Law 16-69, the “Grandparent Caregivers Pilot Program Establishment Act of 2005”, was introduced in Council and assigned Bill No. 16-180

which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 2005, and December 6, 2005, respectively. Signed by the Mayor on December 22, 2005, it was assigned Act No. 16-231 and transmitted to both Houses of Congress for its review. D.C. Law 16-69 became effective on March 8, 2006.

§ 4-251.02. Establishment of program to provide subsidies for grandparent caregivers.

(a) No later than March 1, 2006, the Mayor shall establish a program through which eligible grandparents may receive subsidy payments for the care and custody of a child residing in their home.

(b) Repealed.

(Mar. 8, 2006, D.C. Law 16-69, § 102, 53 DCR 54; Mar. 3, 2010, D.C. Law 18-111, § 5002, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111, in subsec. (a), deleted “pilot” preceding “program”; and repealed subsec. (b), which had read as follows: “(b) The pilot program shall continue through September 30, 2009.”

Emergency legislation. — For temporary (90 day) addition, see § 102 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

For temporary (90 day) amendment of section, see § 5002 of Fiscal Year 2010 Budget

Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5002 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-205.19b.

Short title. — Short title: Section 5001 of

D.C. Law 18-111 provided that subtitle A of title V of the act may be cited as the "Grandparent Caregivers Extension Program Amendment Act of 2009".

Authority Pursuant to D.C. Act 16-278, the Grandparent Caregivers Pilot Establishment Emergency Act of 2006, and any substantially identical successor legislation, see Mayor's Order 2006-38, March 20, 2006 (53 DCR 5078).

Delegation of Authority. — Delegation of

§ 4-251.03. Eligibility.

(a) A grandparent may be eligible to receive subsidy payments under this section if:

(1) The grandparent has been the child's primary caregiver for at least the previous 6 months.

(2) The child has resided in the grandparent's home for at least the previous 6 months;

(3) The child's parent has not resided in the grandparent's home for at least the previous 6 months; provided, that a parent may reside in the home without disqualifying the grandparent from receiving a subsidy if:

(A) The parent has designated the grandparent to be the child's standby guardian pursuant to Chapter 48 of Title 16;

(B) The parent is a minor enrolled in school; or

(C) The parent is a minor with a medically verifiable disability under criteria that shall be prescribed by the Mayor pursuant to § 4-251.06.

(4) The grandparent, and all adults residing in the grandparent's home, has submitted to a criminal background check;

(5) The grandparent's household income is under 200 percent of the federally-defined poverty level;

(6) The grandparent is a resident of the District as defined by § 4-205.03;

(7) The grandparent has applied for Temporary Assistance for Needy Families benefits for the child;

(8) The grandparent has entered into a subsidy agreement that includes a provision that no payments received under the agreement shall inure to the benefit of the child's parent but shall be solely for the benefit of the child;

(8A) The grandparent is not currently receiving a guardianship or adoption subsidy for the child;

(9) The grandparent has provided a signed statement, sworn under penalty of perjury, that the information provided to establish eligibility pursuant to this section, or any rules promulgated pursuant to § 4-251.06, is true and accurate to the best belief of the grandparent applicant; and

(10) The grandparent has met any additional requirements prescribed by the Mayor pursuant to rules issued under § 4-251.06.

(b)(1) The Mayor shall recertify the eligibility of each grandparent receiving a subsidy on at least an annual basis.

(2) For the purposes of the recertification, a grandparent may be required to provide a signed statement, sworn under penalty of perjury, that the information provided to establish continued eligibility pursuant to this section, or any rules promulgated pursuant to § 4-251.06, remains true and accurate to the best belief of the grandparent.

(c)(1) The Mayor shall terminate subsidy payments to a grandparent at any time if:

(A) The Mayor determines the grandparent no longer meets the eligibility requirements established by this section, or by rules issued under § 4-251.06; or

(B) There is a substantiated finding of child abuse or neglect against the grandparent caregiver resulting in the removal of the child from the grandparent's home.

(2) A grandparent whose subsidy payments are terminated as a result of the removal of the child from the grandparent's home may reapply if the child has been returned to the grandparent's home.

(d) Eligibility for subsidy payments under this section may continue until the child reaches 18 years of age.

(e) An applicant whose application for a subsidy has been denied or whose subsidy has been terminated shall be entitled to a hearing under the applicable provisions of Chapter 5 of Title 2; provided that a grandparent shall not be entitled to a hearing if the denial or termination of a subsidy is based upon the unavailability of appropriated funds.

(f) Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under § 22-2405(a).

(Mar. 8, 2006, D.C. Law 16-69, § 103, 53 DCR 54; Sept. 20, 2007, D.C. Law 17-21, § 3(a), 54 DCR 6835.)

Effect of amendments. — D.C. Law 17-21, in subsec. (a), rewrote pars. (1) and (3) and added par. (8A); and added subsec. (f).

Emergency legislation. — For temporary (90 day) addition, see § 103 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

For temporary (90 day) amendment of section, see § 3(a) of Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

Legislative history of Law 17-21. — Law 17-21, the "Safe and Stable Homes for Children and Youth Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-41 which was referred to the Committees of Human Services and Public Safety and Judiciary. The Bill was adopted on first and second readings on June 5, 2007, and June 21, 2007, respectively. Signed by the Mayor on July 9, 2007, it was assigned Act No. 17-70 and transmitted to both Houses of Congress for its review. D.C. Law 17-21 became effective on September 20, 2007.

§ 4-251.04. Subsidies.

(a) All subsidies established under this chapter shall be subject to the availability of appropriations. Nothing in this chapter shall be construed as creating an entitlement to a subsidy for any person.

(b) Pursuant to § 4-251.06, the Mayor shall establish by rule the amount of a subsidy a grandparent is eligible to receive under this chapter; provided, that the subsidy shall be at least 66%, but no more than 105%, of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship established under § 29-6103.3 of the District of Columbia Municipal Regulations.

(c) The amount of a subsidy a grandparent is eligible to receive under this chapter shall be offset by any amount a grandparent receives as TANF or Supplemental Security Income for the child.

(Mar. 8, 2006, D.C. Law 16-69, § 104, 53 DCR 54; Sept. 20, 2007, D.C. Law 17-21, § 3(b), 54 DCR 6835; Apr. 8, 2011, D.C. Law 18-370, § 502, 58 DCR 1008.)

Effect of amendments. — D.C. Law 17-21, in subsec. (b), substituted “within 5% (no less than 95% and no more than 105%) of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship” for “no less than the regular daily rate of the subsidy for a long-term permanent guardianship”; and, in subsec. (c), substituted “receives as TANF or Supplemental Security Income” for “receives from TANF”.

D.C. Law 18-370, in subsec. (b), substituted “that the subsidy shall be at least 66%, but no more than 105%” for “that the subsidy shall be within 5% (no less than 95% and no more than 105%)”.

Emergency legislation. — For temporary (90 day) addition, see § 104 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

For temporary (90 day) amendment of section, see § 3(b) of Safe and Stable Homes for Children and Youth Emergency Amendment

Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

Legislative history of Law 17-21. — For Law 17-21, see notes following § 4-251.03.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 4-202.05.

Short title. — Short title: Section 501 of D.C. Law 18-370 provided that subtitle A of title V of the act may be cited as “Grandparent Caregivers Program and Long-Term Permanent Guardianship Subsidies Amendment Act of 2010”.

Editor’s notes. — Section 503 of D.C. Law 18-370 provided: “Sec. 503. Applicability. This subtitle shall apply as of January 1, 2011.”

§ 4-251.05. Reports.

No later than January 1 of each year, beginning in 2007, the Mayor shall issue a report to the Council on the subsidy program established by this chapter. At a minimum, the report shall include:

- (1) The number of applications filed for the subsidy;
- (2) The number of subsidies awarded;
- (3) The number of families receiving both the subsidy and TANF;
- (4) The number of applications denied for failure to meet eligibility criteria;
- (5) The number of applications denied for lack of appropriated funding;
- (6) An estimate of the number of grandparent caregivers whose income is less than 200 percent of the federally-defined poverty level but who have not applied for the subsidy;
- (7) The number of subsidies terminated by the Mayor pursuant to § 4-251.03(c) or voluntarily by the grandparent caregiver;
- (8) The number of substantiated cases of fraud and a comparison of this figure to the proportion of cases of fraud involving other benefit programs, including TANF, Food Stamps, and Medicaid;
- (9) The number of children removed from households receiving a subsidy under the program established by this chapter due to a substantiated allegation of child abuse or neglect; and
- (10) Any legislative, policy, or administrative recommendations of the Family Court of the Superior Court of the District of Columbia or of agencies designated by the Mayor to execute the provisions of this chapter that are intended to enhance the effectiveness of the program.

(Mar. 8, 2006, D.C. Law 16-69, § 105, 53 DCR 54.)

Emergency legislation. — For temporary (90 day) addition, see § 105 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

§ 4-251.06. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Mar. 8, 2006, D.C. Law 16-69, § 106, 53 DCR 54.)

Emergency legislation. — For temporary (90 day) addition, see § 106 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Act 16-278, the

Grandparent Caregivers Pilot Establishment Emergency Act of 2006, and any substantially identical successor legislation, see Mayor's Order 2006-38, March 20, 2006 (53 DCR 5078).

Resolutions. — Resolution 16-795, the "Grandparent Caregivers Pilot Program Subsidy Rules Approval Resolution of 2006", was approved effective September 21, 2006.

§ 4-251.07. Construction.

(a) Nothing in this chapter shall be construed as relieving the parent of a child from any child support order regarding the child for whom a grandparent is receiving a subsidy under this chapter.

(b) Nothing in this chapter shall be construed to create a new cause of action or to limit the rights or remedies available to parents in custody or guardianship actions.

(Mar. 8, 2006, D.C. Law 16-69, § 107, 53 DCR 54.)

Emergency legislation. — For temporary (90 day) addition, see § 107 of Grandparent Caregivers Pilot Program Establishment Emergency Act of 2006 (D.C. Act 16-278, February 22, 2006, 53 DCR 1459).

Legislative history of Law 16-69. — For Law 16-69, see notes following § 4-251.01.

CHAPTER 2B. FOOD STAMP EXPANSION.

Subchapter I. General

Sec.

Sec.

4-261.01. Definitions.

4-261.02. Categorical eligibility for food stamps.

4-261.03. LIHEAP Heat and Eat initiative.

plemental Nutrition Assistance Program Benefits.

4-261.22. Implementation of simplified self-employment deduction.

4-261.23. Reporting.

Subchapter II. Transitional SNAP

4-261.21. Implementation of transitional Sup-

Subchapter I. General.

§ 4-261.01. Definitions.

For the purpose of this subchapter, the term:

(1) “Categorical eligibility” means the automatic eligibility for the food stamps program as determined by the enrollment in a separate TANF funded program.

(2) “Food stamp program” means the federally funded Supplemental Nutrition Assistance Program.

(3) “LIHEAP” means the Low Income Home Energy Assistance program.

(4) “Maximum standard utility allowance” means the maximum level of accepted utility-based income deductions used in determining benefits under the food stamp program.

(5) “TANF” means the Temporary Assistance for Needy Families program.

(Mar. 3, 2010, D.C. Law 18-111, § 5081, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5081 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5081 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and

assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 5080 of D.C. Law 18-111 provided that subtitle I of title V of the act may be cited as the “Food Stamp Expansion Act of 2009”.

§ 4-261.02. Categorical eligibility for food stamps.

(a) The Mayor shall establish a TANF funded program or service for the purpose of establishing categorical eligibility.

(b) Categorical eligibility shall be granted to all applicants with a gross income at or below 200% of the federal poverty level.

(Mar. 3, 2010, D.C. Law 18-111, § 5082, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5082 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5082

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-261.01.

§ 4-261.03. LIHEAP Heat and Eat initiative.

(a) The Mayor shall establish a LIHEAP Heat and Eat initiative for the purpose of providing the maximum standard utility allowance to all participants.

(b) All food stamp program recipients shall be automatically enrolled in the LIHEAP Heat and Eat initiative.

(c) All LIHEAP Heat and Eat participants shall receive a minimum annual benefit of \$1.

(d) Participation in the LIHEAP Heat and Eat initiative shall not preclude any recipient from receiving standard LIHEAP benefits for which he or she is eligible.

(Mar. 3, 2010, D.C. Law 18-111, § 5083, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5083 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5083

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-261.01.

Subchapter II. Transitional SNAP.

§ 4-261.21. Implementation of transitional Supplemental Nutrition Assistance Program Benefits.

A qualified household that ceases to receive cash assistance under the District's Temporary Assistance for Needy Families ("TANF") program, funded by federal TANF funds, District Maintenance of Effort ("MOE") funds, or any other cash assistance received under a state-funded program (collectively "cash assistance") due to a change in income, shall receive transitional Supplemental Nutrition Assistance program ("SNAP") benefits for a period of 5 months after the date on which the cash assistance was terminated, automatically adjusted for the loss of the cash assistance, pursuant to section 11(s) of the Food Stamp Act of 1964, approved August 31, 1964 (78 Stat. 703; 7 U.S.C. § 2020(s)) ("Food Stamp Act").

(Sept. 24, 2010, D.C. Law 18-223, § 5082, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 5082 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support

Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was

assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 5081 of D.C. Law 18-223 provided that subtitle I of title V of the act may be cited as the “SNAP Expansion Act of 2010”.

§ 4-261.22. Implementation of simplified self-employment deduction.

No later than March 31, 2011, the Mayor shall submit to the United States Department of Agriculture, a proposal to use a standard self-employment deduction, with an option for an applicant to prove actual expenses in the event that the applicant’s expenses exceed the set standard deduction under SNAP, pursuant to section 5(m) of the Food Stamp Act (7 U.S.C. § 2014 (m)) and to 7 C.F.R. § 273.11(b)(3)(v)).

(Sept. 24, 2010, D.C. Law 18-223, § 5083, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 5083 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 4-261.21.

§ 4-261.23. Reporting.

Beginning on January 1, 2011, and every 6 months thereafter, the Mayor shall provide the following information, delineated by month, to the Council, the:

- (1) Number of households participating in the District’s cash assistance TANF programs;
- (2) Number of households participating in SNAP;
- (3) Number of homeless households participating in SNAP;
- (4) Number of households who left the District’s cash assistance TANF programs, including the reasons they left;
- (5) Number of households who left SNAP, including the reasons they left; and
- (6) Number of SNAP participants who are self-employed.

(Sept. 24, 2010, D.C. Law 18-223, § 5084, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 5084 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 4-261.21.

CHAPTER 3. ADOPTION PROGRAMS.

Subchapter I. General

Sec.

- 4-301. Adoption subsidy payments. *
- 4-302. Powers of Mayor regarding custody, placement and adoption of dependent children.

Subchapter II. Interstate Compact on Adoption and Medical Assistance

- 4-321. Definitions.
- 4-322. Findings.
- 4-323. Purposes.
- 4-324. Medical assistance.
- 4-325. Compacts authorized.
- 4-326. Contents of compacts.
- 4-327. Optional contents of compacts.
- 4-328. Federal participation.

Subchapter III. Incentive Program and Special Funds

Sec.

- 4-341. Legislative findings.
- 4-342. Definitions.
- 4-343. Establishment of the Adoption Incentive Program; purpose.
- 4-344. Establishment of the Adoption Voucher Fund.
- 4-344.01. Establishment of the Adoption Support Fund.
- 4-345. Benefits.
- 4-346. Administration of the Adoption Incentive Program and the Adoption Voucher Fund.

Subchapter IV. Post-Adoption Contact Agreements

- 4-361. Post-adoption contact agreement.

*Subchapter I. General.***§ 4-301. Adoption subsidy payments.**

(a) Except as provided in subsection (f) of this section, the Mayor may conclude arrangements with persons or institutions at such rates as may be agreed upon.

(b)(1) The Mayor may make adoption subsidy payments to an adoptive family (irrespective of the state of residence of the family), as needed, on behalf of a child with special needs, where such child would in all likelihood go without adoption except for the acceptance of the child as a member of the adoptive family, and where the adoptive family has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. Subsidy payments may be made under this section only pursuant to a subsidy payment agreement entered into by the Mayor and the adoptive parents concerned prior to completion of the adoptive process, but subsidy payments may be made before such adoption becomes final.

(2) For the purposes of this subsection:

(A) The term "child with special needs" includes any child who is difficult to place in adoption because of age, race, or ethnic background, physical or mental condition, or membership in a sibling group which should be placed together. A child for whom an adoptive placement has not been made within 6 months after he is legally available for adoptive placement shall be considered a child with special needs within the meaning of this section.

(B) The term "adoptive family" includes single persons.

(c) Any public agency or licensed child-placing agency, having a child with special needs in foster care or institutional care, or any foster parent having such a child in his home may recommend to the Mayor a subsidy for the adoption of such child, and may include in the recommendation advice as to the

appropriate level of payments and any other information likely to assist the Mayor in carrying out the provisions of this section. The Mayor shall make the determination as to whether or not an appropriate adoptive home exists for the child, but in so doing the Mayor shall refer to the recommendations of the referring agency. If the Mayor concludes that the child referred is a child with special needs within the meaning of this section, and that an appropriate adoptive home exists for the child, the Mayor is authorized to enter into a tentative adoption subsidy agreement with the prospective adoptive family, and upon entering into such an agreement, the Mayor may accept a transfer of relinquishment of parental rights from the referring agency pursuant to § 4-1406.

(d) If a child in the custody of the Mayor or a licensed child-placing agency has been in foster care or institutional care for at least 6 months after the child is considered legally available for adoptive placement, the Mayor or agency shall inform the family or institution providing care of the possibility of financial aid for adoption under this section. If the family caring for the prospective adoptee applies to the Mayor for adoption of the child, and if it appears to the Mayor after study that the family would be an appropriate adoptive family for the child but for the family's economic inability to meet the child's needs, the Mayor shall enter into a tentative agreement with the family concerning the amount and duration of a proposed subsidy in the event the child is placed for adoption with that family. Thereafter the Mayor may accept a transfer of relinquishment of parental rights from the referring agency in appropriate cases. The Mayor shall in all cases take all steps necessary to assist the family in completing the legal and procedural requirements necessary to effectuate the adoption, including payment for legal fees and court costs.

(e)(1) The amount and duration of adoption subsidy payments may vary according to the special needs of the child, and may include maintenance costs, medical, dental, and surgical expenses, psychiatric and psychological expenses, and other costs necessary for his care and well-being. A subsidy may be paid on a long-term basis to help a family whose income is limited and is likely to remain so; on a time-limited basis to help a family meet the cost of integrating a child into the family over a specified period of time; or on a special services basis to help a family meet a specific anticipated expense or expenses when no other resource appears to be available. Except as provided in paragraph (2) of this subsection, eligibility for payments shall continue until the child reaches 18 years of age.

(2) For adoptions that are finalized on or after May 7, 2010, eligibility for payments shall continue until the child reaches 21 years of age.

(f)(1) A child who was eligible for adoption assistance payments under this section during an initial adoption, which occurred on or after October 1, 1997, is eligible for the subsidy in a subsequent adoption if the initial adoption was disrupted because:

(A) The parental rights of the adoptive parents have been terminated or relinquished; or

(B) The adoptive parents have died.

(2) The Mayor is authorized to make payments under this section from appropriations for the care of children in foster homes and institutions, and to seek and accept funds from other sources including federal, private, and other public funding sources, to carry out the purposes of this section. The amount expended by the Mayor for any subsidy may not exceed the highest amount the Mayor would be authorized to spend in providing or securing support and special services for the child if a child were in the legal custody or guardianship of the Mayor.

(3) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(g) No adoption subsidy payment shall be made on behalf of any child with respect to whom an adoption decree has been entered by the Superior Court of the District of Columbia, pursuant to Chapter 3 of Title 16, prior to April 2, 1974.

(h) Once during each calendar year the Mayor shall review the need for continuing each family's subsidy. At the time of such review and at other times during the year when changed conditions, including variations in medical opinions, prognosis, and costs are deemed by the Mayor to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child. Any parent who is a party to a subsidy agreement may at any time in writing request, for reasons set forth in the request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than 30 days from the receipt of the request. Any adjustment may be made retroactive to the date the request was received by the Mayor. If the request is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 5 of Title 2.

(i)(1) The Mayor shall keep such records as are necessary to evaluate the effectiveness of adoption subsidy as a means of encouraging and promoting the adoption of children with special needs. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include, but not be limited to:

(A) The number of children placed in adoptive homes under subsidy agreements during the year preceding the annual report and the major characteristics of the children placed; and

(B) The number of children currently in foster care with the Mayor for 6 months or more, and the legal status of those children.

(2) The Mayor shall disseminate information to prospective adoptive families as to the availability of adoptable children and of the existence of aid to families who qualify for a subsidy under this section.

(j) All rules and regulations adopted by the Mayor pursuant to §§ 4-116, 4-117, 4-301 and 4-302 shall be published in the District of Columbia Register as required by § 2-505.

(July 26, 1892, 27 Stat. 269, ch. 250, § 3; Jan. 2, 1974, 87 Stat. 1058, Pub. L.

93-241, § 1(a)(2); June 27, 2000, D.C. Law 13-136, § 101, 47 DCR 2850; Sept. 24, 2010, D.C. Law 18-230, § 501, 57 DCR 6951.)

Cross references. — Adoption proceedings, see § 16-309.

Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-115. 1973 Ed., § 3-115.

Effect of amendments. — D.C. Law 13-136 rewrote subsec. (f), which formerly read:

“The Mayor is authorized to make payments under this section from appropriations for the care of children in foster homes and institutions, and to seek and accept funds from other sources including federal, private, and other public funding sources, to carry out the purposes of this section. The amount expended by the Mayor for any subsidy may not exceed the highest amount the Mayor would be authorized to spend in providing or securing support and special services for the child if the child were in the legal custody of the Mayor. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.”

D.C. Law 18-230, in subsec. (e), designated the existing text as par. (1); in subsec. (e)(1), substituted “Except as provided in paragraph (2) of this subsection, eligibility for payments” for “Eligibility for payments”; and added subsec. (e)(2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101 of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

Section 2 of D.C. Law 18-208, in subsec. (e), designated the existing text as par. (1); in subsec. (e)(1), substituted “Except as provided in paragraph (2) of this subsection, eligibility for payments” for “Eligibility for payments”; and added subsec. (e)(2) to read as follows:

“(2) For adoptions that are finalized on or after the effective date of the Adoption and Guardianship Subsidy Emergency Amendment Act of 2010, passed on emergency basis on April 20, 2010 (Enrolled version of Bill 18-759), eligibility for payments shall continue until the child reaches 21 years of age.”.

Section 5(b) of D.C. Law 18-208 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 101 of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 101 of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 101 of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 101 of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 2 of Adoption and Guardianship Subsidy Emergency Amendment Act of 2010 (D.C. Act 18-393, May 7, 2010, 57 DCR 4346).

Legislative history of Law 13-136. — Law 13-136, the “Adoption and Safe Families Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

Legislative history of Law 18-230. — Law 18-230, the “Adoption Reform Act of 2010”, was introduced in Council and assigned Bill No. 18-547, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 12, 2010, it was assigned Act No. 18-547 and transmitted to both Houses of Congress for its review. D.C. Law 18-230 became effective on September 24, 2010.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 4-302. Powers of Mayor regarding custody, placement and adoption of dependent children.

The Mayor may:

(1) Accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Mayor, and to provide for the care and support of such children during their minority or during the term of their commitment, including the initiation of adoption proceedings and the provision of subsidy in appropriate cases under § 4-301;

(2) With respect to all children accepted by him for care, place them in private families either without expense or with reimbursement for the cost of care, or in appropriate cases to place them in private families under an adoption subsidy agreement concluded under § 4-301 or to place them in institutions willing to receive them either without expense or with reimbursement for the cost of care; and

(3) Consent to, arrange for, or initiate court proceedings for the adoption of all children committed to the care of the Mayor whose parents have been permanently deprived of custody by court order, or whose parents have relinquished a child to the Mayor or to a licensed child-placing agency which has transferred the relinquishment to the Mayor under § 4-1406.

(July 26, 1892, 27 Stat. 269, ch. 250, § 5; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 3; Jan. 2, 1974, 87 Stat. 1060, Pub. L. 93-241, § 1(b).)

Cross references. — Age of majority, see § 46-101.

Prior Codifications. — 1981 Ed., § 3-117. 1973 Ed., § 3-117.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commission. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Adoption proceedings.
Consent to adoption.

Adoption proceedings.

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adoptors and by department of public welfare

which appeared as adoptee's legal guardian. D.C. Code §§ 3-117, 16-304(b)(2)(F), (e), 16-307. In re Adoption of Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

Consent to adoption.

As a prerequisite for either licensed child placement agency, commissioner, or guardian of the person of a minor to exercise power to consent to adoption, parental rights must have

been judicially terminated. D.C. Code §§ 3-117(3), 16-301 et seq., 16-2301(20)(D), (22), 32-786. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Subchapter II. Interstate Compact on Adoption and Medical Assistance.

§ 4-321. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Department" means the District of Columbia Department of Human Services.

(3) "Residence state" means the state where the child is living.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(June 27, 2000, D.C. Law 13-136, § 401, 47 DCR 2850.)

Legislative history of Law 13-136. — Law 13-136, the "Adoption and Safe Families Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

Complementary Legislation: Ala.—Code 1975, §§ 26-10B-1 to 26-10B-10. Ark.—A.C.A. § 9-29-301. Colo.—West's C.R.S.A. §§ 24-60-2401 to 24-60-2405. Conn.—C.G.S.A. § 17a-116d. Del.—31 Del.C. §§ 5401 to 5406. D.C.—D.C. Official Code, 2001 Ed. §§ 4-321 to 4-328. Fla.—West's F.S.A. §§ 409.406, 409.407. Hawaii—H R S §§ 350C-1 to 350C-7. Idaho—I.C. §§ 39-7501 to 39-7505. Ill.—S.H.A. 45 ILCS

17/5-1 to 17/5-99. Ind.—West's A.I.C. 31-19-29-1 to 31-19-29-6. Iowa—I.C.A. § 600.23. Kan.—K.S.A. 38-335 to 38-340. La.—LSA-Ch.C. arts. 1601 to 1607. Maine—22 M.R.S.A. §§ 4171 to 4176. Md.—Code, Family Law, §§ 5-4A-01 to 5-4A-08. Miss.—Code 1972, §§ 93-17-101 to 93-17-109. Mo.—V.A.M.S. §§ 453.500, 453.503. Nev.—N.R.S. 127.400 to 127.420. N.H.—RSA 126-D:1 to 126-D:7. N.M.—NMSA 1978, §§ 40-7B-1 to 40-7B-6. N.C.—G.S. §§ 7B-3900 to 7B-3906. N.D.—NDCC 50-28-01 to 50-28-05. Okl.—10 Okl.St. Ann. §§ 7510-3.1 to 7510-3.3. Ore.—ORS 417.090 to 417.105. R.I.—Gen.Laws. 1956, §§ 15-7.1-1 to 15-7.1-4. S.C.—Code 1976, §§ 63-9-2000 to 63-9-2050. Tenn.—T.C.A. §§ 36-1-201 to 36-1-206. Tex.—V.T.C.A., Family Code §§ 162.201 to 162.206. U.S.—42 U.S.C. § 670 et seq. Va.—Code 1950, §§ 63.2-1401 to 63.2-1405. W.Va.—Code, 49-2C-1 to 49-2C-4.

§ 4-322. Findings.

The Council of the District of Columbia finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant § 4-301, and assuring the protection of the interests of children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(June 27, 2000, D.C. Law 13-136, § 402, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-323. Purposes.

The purposes of this subchapter are to:

- (1) Provide procedures for interstate children's adoption assistance payments, including medical payments; and
- (2) Authorize the Mayor to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the District.

(June 27, 2000, D.C. Law 13-136, § 403, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-324. Medical assistance.

(a) A child with special needs who is resident in the District and who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from the District upon the filing with the Department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The Department shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of the District and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c)(1) The Department shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefore. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents.

(2) The additional coverage and benefit amounts provided pursuant to this subsection shall be for the cost of services for which there is no federal contribution, or which, if federally aided, are not provided by the residence state.

(3) The Mayor shall make regulations implementing this subsection. The regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine not to exceed \$10,000 or imprisonment for not to exceed 30 days, or both. A violation of this subsection shall be prosecuted by the Corporation Counsel of the District of Columbia.

(e) The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with the District under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by the District. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by the District shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

(June 27, 2000, D.C. Law 13-136, § 404, 47 DCR 2850.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(c) of Adoption and Safe Families Compliance Temporary Amendment Act of 2000 (D.C. Law 13-193, October 21, 2000, law notification 47 DCR 8983).

Emergency legislation. — For temporary (90-day) amendment of section, see § 4(c) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) amendment of sec-

tion, see § 4(c) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of section, see § 4(c) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-325. Compacts authorized.

The Mayor is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of the District with other states to protect children on behalf of whom adoption assistance is being provided by the District and to provide procedures for interstate children's adoption assistance payments, including medical payments. When so entered into, and for so long as it shall remain in force, the compact shall have the force and effect of law.

(June 27, 2000, D.C. Law 13-136, § 405, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-326. Contents of compacts.

A compact entered into pursuant to the authority conferred by this subchapter shall have the following content:

- (1) A provision making it available for joinder by all states.
- (2) A provision or provisions for withdrawal from the compact upon

written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

(5) Such other provisions as may be appropriate to implement the proper administration of the compact.

(June 27, 2000, D.C. Law 13-136, § 406, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-327. Optional contents of compacts.

A compact entered into pursuant to this subchapter may contain the following provisions in addition to those required pursuant to § 4-326.

(1) Provisions establishing procedures for and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and

(2) Any other provisions as may be appropriate or incidental to the proper administration of the compact.

(June 27, 2000, D.C. Law 13-136, § 407, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

§ 4-328. Federal participation.

Consistent with federal law, the Department, in connection with the administration of this subchapter and any compact pursuant hereto, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV(E) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The Department shall apply for and administer all relevant federal aid in accordance with law.

(June 27, 2000, D.C. Law 13-136, § 408, 47 DCR 2850.)

Legislative history of Law 13-136. — For D.C. Law 13-136, see notes following § 4-321.

Subchapter III. Incentive Program and Special Funds.

§ 4-341. Legislative findings.

(a) The long term needs of District of Columbia children who are in foster care are not being served. Although the Adoption and Safe Families Amendment Act of 2000 shortens the time in which children may remain in foster care, many of these children require additional assistance in order to be adopted.

(b) The financial costs associated with maintaining the 3,000 foster children are high. In addition to the monthly payments to foster parents, the Child and Family Services Agency must supervise and staff each case, the Superior Court of the District of Columbia must pay attorneys and judges to review each case, and the Office of Corporation Counsel must staff and review each case.

(c) Even more critical are the tragic human costs associated with allowing children to languish in foster care. The most recent study on the fate of foster children who “age out” of the child welfare system without finding a permanent home found that 12 to 18 months after they left foster care, just half were employed, one-third were receiving public assistance, one-fifth of the girls had given birth, and more than one-quarter of the boys had been incarcerated.

(d) Many of the children in foster care have foster parents desirous of adopting them but are unable to do so because of the costs associated with adoption.

(e) Providing these foster parents with a one-time financial assistance package in the form of vouchers would facilitate adoptions. Financial assistance would consist of vouchers to cover the costs of the necessary homestudies, compilation of information on the foster children’s backgrounds and special needs, and attorneys’ fees.

(f) The Congress has appropriated, in the District of Columbia Appropriations Act, 2000, approved November 29, 1999 (Pub. L. No. 106-113; 113 Stat. 1501), a \$5 million payment, to remain available until September 30, 2001, to the District of Columbia to create incentives to promote the adoption of children in the District’s foster care system.

(Oct. 19, 2000, D.C. Law 13-172, § 3802, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 3802 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) addition of section, see § 3802 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) addition of section,

see § 3802 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-501.

§ 4-342. Definitions.

For the purpose of this subchapter, the term:

(1) "Attorneys' fees" means the legal costs and expenses which are directly related to the adoption of a foster child or foster children.

(2) "Foster care" means 24 hour substitute care for children placed away from their parents or guardians for whom the Child and Family Services Agency has placement care and responsibility.

(3) "Foster child" and "foster children" mean a child, or children, who comes under the jurisdiction of the Superior Court of the District of Columbia pursuant to § 16-2320 or whose parents' rights have been relinquished pursuant to § 4-1406.

(4) "Foster parent" means an individual with whom a foster child is legally placed.

(5) "Homestudy" means the "investigation, report and recommendation" required by § 16-307.

(6) "Related sibling group" means a group of siblings with at least one parent in common, residing together in the home of a foster parent.

(Oct. 19, 2000, D.C. Law 13-172, § 3803, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 3803 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-341.

§ 4-343. Establishment of the Adoption Incentive Program; purpose.

There is established the Adoption Incentive Program ("Program"). The purpose of the Program is to provide foster parents with access to a one-time financial assistance package to assist them with the expenses associated with attorneys' fees and the homestudy relating to the adoption of a foster child, subject to the availability of funds in the Adoption Voucher Fund.

(Oct. 19, 2000, D.C. Law 13-172, § 3804, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 3804 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-341.

§ 4-344. Establishment of the Adoption Voucher Fund.

(a) There is established the Adoption Voucher Fund ("Fund"). The Fund shall be comprised of \$2 million of the \$5 million appropriated in the District of Columbia Appropriations Act, 2000, approved November 29, 1999 (Pub. L. No. 106-113; 113 Stat. 1501), and additional funds in their entirety which

Congress may appropriate from time to time for the purpose of providing incentives for foster parents to adopt District children.

(b) Monies in the Fund shall be used only for the payment of homestudies and attorneys' fees, as well as any administrative costs directly associated with the implementation of this subchapter. The Fund shall be the sole source of payments under the Program.

(c) Funds deposited in the Fund shall not revert to the General Fund of the District of Columbia at the end of the fiscal year or at any other time, but shall remain available until expended for the purposes set forth in subsection (b) of this section, subject to authorization by Congress in an appropriations act.

(Oct. 19, 2000, D.C. Law 13-172, § 3805, 47 DCR 6308; Dec. 7, 2004, D.C. Law 15-205, § 5302, 51 DCR 8441.)

Effect of amendments. — D.C. Law 15-205 added subsec. (c).

Emergency legislation. — For temporary (90-day) addition of section, see § 3805 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 5302 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 5302 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-341.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 4-204.61.

Short title. — Short title of subtitle C of title V of Law 15-205: Section 5301 of D.C. Law 15-205 provided that subtitle C of title V of the act may be cited as the Adoption Voucher Fund Amendment Act of 2004.

§ 4-344.01. Establishment of the Adoption Support Fund.

(a) There is established the Adoption Support Fund ("Support Fund"). The Support Fund shall be comprised of \$3 million of the \$5 million appropriated in the District of Columbia Appropriations Act, 2000, approved November 29, 1999 (Pub. L. No. 106-113; 113 Stat. 1501), and additional funds in their entirety which Congress may appropriate from time to time for the purpose of providing support incentives for foster parents who adopt District of Columbia children and enhancing recruitment and support of prospective adoptive families.

(b) Monies in the Support Fund shall be used only for the following purposes:

(1) \$1 million to establish a scholarship fund to support postsecondary education and training for adopted children;

(2) \$1 million to create an Adoption Resource Center with post-adoption service capacity; and

(3) \$1 million to enhance recruitment and support of prospective adoptive families.

(c) The Child and Family Services Agency shall administer the Support Fund.

(Oct. 19, 2000, D.C. Law 13-172, § 3805a, as added Oct. 3, 2001, D.C. Law 14-28, § 2202, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2002 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and

assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

§ 4-345. Benefits.

(a) A foster parent may receive the following:

(1) A voucher for the payment of \$1,500 for a homestudy for each foster child or related sibling group; and

(2) A voucher for the payment of \$5,000 for attorneys’ fees for each foster child or related sibling group; provided that, the voucher may only be applied to attorney’s fees charged at an hourly rate of not more than \$125 per hour and related expenses billed at actual cost.

(b) Nothing in this subchapter shall be construed to create an entitlement to financial assistance for the adoption of a foster child, or foster children, if no funds remain available in the Adoption Voucher Fund.

(c) Vouchers issued pursuant to this section shall be in addition to, and may not limit the amount of, money available to a foster parent under § 4-301.

(Oct. 19, 2000, D.C. Law 13-172, § 3806, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 3806 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-341.

§ 4-346. Administration of the Adoption Incentive Program and the Adoption Voucher Fund.

(a) The Child and Family Services Agency (“CFSA”) shall administer the Program and the Fund. CFSA shall:

(1) Within 180 days of October 19, 2000, identify children whose permanency plans are adoption, for as long as funds are available from the Fund;

(2) Obtain a document signed by the foster parents stating their intent to adopt within 180 days of identifying the children pursuant to paragraph (1) of this subsection; and

(3) Upon obtaining the signed document required by paragraph (2) of this subsection, immediately provide a voucher for attorneys’ fees and a voucher for the homestudy to the foster parent.

(b) Vouchers issued pursuant to this section shall contain a statement describing the benefits to the adopting foster parents under the program, as well as the terms and conditions for the use of the vouchers.

(c) Adopting foster parents shall present the vouchers to their attorney and licensed agency hired to perform the homestudy.

(d) An attorney hired by a foster parent shall submit a voucher for attorneys' fees with his or her first bill to CFSA, which shall set up an account with a \$5,000 balance. Thereafter, the attorney shall submit his or her bills quarterly to CFSA. CFSA shall pay the attorney within 30 days with funds from the account.

(e) The licensed agency hired to perform the homestudy shall submit its bill and the voucher for the homestudy to CFSA after the homestudy is complete for payment within 30 days.

(Oct. 19, 2000, D.C. Law 13-172, § 3807, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 3807 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

tion, see §§ 3802 to 3807 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-341.

For temporary (90 day) amendment of sec-

Subchapter IV. Post-Adoption Contact Agreements.

§ 4-361. Post-adoption contact agreement.

(a)(1) A prospective adoptive parent or an adoptive parent ("adoptive parent") and the birth parent or other birth relative of a prospective adoptee or adoptee ("adoptee") may enter into a written post-adoption contact agreement ("PAC agreement") to allow contact, after the adoption, between the adoptee and a birth parent or other birth relative of the adoptee; provided, that written consent to the PAC agreement is obtained from an adoptee who is 14 years of age or older.

(2) The decision to enter into a PAC agreement shall be at the sole discretion of the adoptive parent.

(3) Failure to comply with a condition of the PAC agreement shall not be grounds for revoking consent to, or setting aside an order for, adoption.

(b)(1) The Family Court of the Superior Court of the District of Columbia ("Family Court") shall enforce a PAC agreement made in accordance with this section if the Family Court finds that enforcement of the PAC agreement is in the best interest of the adoptee.

(2) In enforcing a PAC agreement, the court shall take into consideration the written consent to the agreement of an adoptee who is 14 years of age or older.

(3) For cases involving an adoptee who is a respondent in a child abuse or neglect case under Chapter 23 of Title 16, the court finalizing the adoption shall review and approve any PAC agreement based on whether it is in the best interest of the adoptee prior to finalizing the adoption.

(c) If a party moves to modify a PAC agreement and satisfies the court that the modification is in the best interest of the adoptee, the court shall order that the PAC agreement be modified accordingly.

(d) If a dispute arises between the parties to a PAC agreement, the parties

shall certify that they have participated, or attempted to participate, in good faith, in mediation or other appropriate dispute resolution proceedings to resolve the dispute prior to seeking judicial resolution. The mediator shall be selected by the adoptive parent.

(Sept. 24, 2010, D.C. Law 18-230, § 101, 57 DCR 6951.)

Legislative history of Law 18-230. — Law 18-230, the “Adoption Reform Act of 2010”, was introduced in Council and assigned Bill No. 18-547, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 1, 2010, and

June 15, 2010, respectively. Signed by the Mayor on July 12, 2010, it was assigned Act No. 18-547 and transmitted to both Houses of Congress for its review. D.C. Law 18-230 became effective on September 24, 2010.

CHAPTER 4. DAY CARE.

Sec.	Sec.
4-401. Definitions.	4-408. Waiver of overpayments.
4-402. Day care program authorized; funding system for child development facilities.	4-409. Contracts with licensed child development centers; payment for services.
4-402.01. Funding for day care provided by D.C. Public Schools.	4-410. Payments to child development homes and to in-home caregivers.
4-403. [Repealed].	4-411. Standards for in-home care.
4-404. [Repealed].	4-412. Compliance with District regulation.
4-404.01. Supplemental payments by the Mayor.	4-413. Monitoring day care services; publication of procedures; compliance with federal regulations.
4-405. Schedule of payments by parents.	4-414. Authorization of grants to develop satellite child development home programs.
4-406. Responsibility of Department for payment.	
4-407. Collection of overpayments.	

§ 4-401. Definitions.

As used in this chapter:

(1) The term “child” means an individual between the ages of birth and 15 years.

(2) The term “child development center” means a child development facility for more than 5 children which provides a full day (more than 4 but less than 24 hours per day), part day (up to 4 hours per day) or before and after school child development program, including such programs provided during school vacations.

(3) The term “child development home” means a private residence which provides a child development program for up to a total of 6 children with no more than 2 children younger than 2 years of age in the group. The total of 6 children shall not include those of the caregiver who are 6 years or older; provided, that the total number of children of the caregiver between the ages of 6 and 15 years shall not exceed 3, and of those 3 children, no more than 2 shall be age 10 years or younger. A child development home shall also include care given to a child by a caregiver related to the child. For the purpose of this paragraph, the term “related” means any of the following relationships by marriage, blood, or adoption: Grandparent, parent, brother, sister, step-sister, step-brother, uncle, or aunt.

(3A) The term “children of families who are at-risk” means children living in low-income working families with limited community and family resources or services available to them, such that they are at-risk of becoming dependent upon assistance from the TANF program.

(4) The term “Department” means the Executive Office of the Mayor or the Mayor’s designee.

(5) The term “in-home care” means a child care program provided in a child’s home by an in-home caregiver pursuant to § 4-411.

(5A) The term “TANF” means the Temporary Assistance for Needy Families as defined in § 4-201.01.

(6) The term “termination of employment” means loss of employment by a parent resulting from a reduction in force, or in the case of private employ-

ment, a layoff or reduction in personnel due to budgetary constraints of the employer.

(Sept. 19, 1979, D.C. Law 3-16, § 2, 26 DCR 20; Sept. 29, 1982, D.C. Law 4-163, § 2(a), 29 DCR 3974; Apr. 13, 1999, D.C. Law 12-216, § 2(a), 46 DCR 281; Aug. 16, 2008, D.C. Law 17-219, § 4006, 55 DCR 7598; Sept. 14, 2011, D.C. Law 19-21, § 4022, 58 DCR 6226.)

Cross references. — Fees relating to certificates of occupancy, see § 6-661.01.

License requirements, regulation, modification, or elimination of by Council of the District of Columbia, see § 47-2842.

Special public safety fee, “feepayer” defined, see § 47-2751.

Taxes, tax credit, income including rent charged to licensed, nonprofit child development center, see § 47-1807.06.

Prior Codifications. — 1981 Ed., § 3-301. 1973 Ed., § 3-301.

Effect of amendments. — D.C. Law 17-219 rewrote par. (4), which had read as follows: “(4) The term ‘Department’ means the District of Columbia Department of Human Services.”

D.C. Law 19-21 rewrote par. (3), which formerly read:

“(3) The term ‘child development home’ means a private residence which provides a child development program for up to a total of 5 children with no more than 2 children younger than 2 years of age in the group. The total of 5 children shall not include those of the caregiver who are 6 years or older: Except, that the total number of children of the caregiver between the ages of 6 and 15 shall not exceed 3, and of those 3 children, no more than 2 shall be age 10 or younger. A child development home shall also include care given to a child by a caregiver related to the child. For the purpose of this paragraph, ‘related’ means any of the following relationships by marriage, blood, or adoption: Grandparent, brother, sister, step-sister, step-brother, uncle, and aunt.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Day Care Policy Emergency Amendment Act of 1997 (D.C. Act 12-207, December 15, 1997, 44 DCR 353). Section 3 of D.C. Act 12-207 provided that the Mayor shall issue rules to implement the provision of the act.

For temporary amendment of section, see § 2(a) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(a) of the Day Care Policy Congressional Review

Emergency Amendment Act of 1999 (D.C. Act 13-12, February 8, 1999, 46 DCR 2330).

Legislative history of Law 3-16. — Law 3-16, the “Day Care Policy Act of 1979,” was introduced in Council and assigned Bill No. 3-7, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on May 22, 1979, and June 5, 1979, respectively. Signed by the Mayor on June 29, 1979, it was assigned Act No. 3-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-163. — Law 4-163, the “Day Care Policy Act of 1979 Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-457, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on July 29, 1982, it was assigned Act No. 4-237 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-216. — Law 12-216, the “Day Care Policy Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-328, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-531 and transmitted to both Houses of Congress for its review. D.C. Law 12-216 became effective on April 13, 1999.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-126.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Short title. — Short title: Section 4005 of D.C. Law 17-219 provided that subtitle C of title IV of the act may be cited as the “Childcare Funding Support Amendment Act of 2008”.

Short title: Section 4021 of D.C. Law 19-21 provided that subtitle C of title IV of the act may be cited as “Day Care Policy Amendment Act of 2011”.

Transfer of Functions. — The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Delegation of Authority. — Appointment as Lead Agency and Delegation of Mayor’s

Authority to Administer the Day Care Policy Act of 1979 to the Office of the State Superintendent of Education, see Mayor's Order 2009-3, January 15, 2009 (56 DCR 2017).

§ 4-402. Day care program authorized; funding system for child development facilities.

The Department is hereby authorized to provide a broad program of day care services for children of parents referred or approved by the Department for various training and work incentive programs, for children of other parents known to the Department where day care appears to be in the child's best interest, and for children of low-income families, otherwise unknown to the Department, where the parents are employed outside of the home. As a part of its broad program of day care services, the Department shall develop a funding system for all child development facilities serving such children consistent with the provisions of this chapter that will encourage such facilities to:

(1) Provide a setting and a comprehensive program for the critically important early childhood development experience that will include, but not necessarily be limited to, educational, social, recreational, transportation, health, and nutritional services;

(2) Provide services directed to the total well-being of the child and the stabilization of the family unit;

(3) Provide a program which incorporates a broad-based parent and community participation component;

(4) Provide a resource to enable parents to join or remain in the work force, participate in job training and to attain self-sufficiency and independence for their families; and

(5) Provide a program which protects children of working parents from neglect or inadequate care.

(Sept. 19, 1979, D.C. Law 3-16, § 3, 26 DCR 20.)

Prior Codifications. — 1981 Ed., § 3-302. 1973 Ed., § 3-302.

Temporary Addition of Section. — Section 2 of D.C. Law 18-46 added a section to read as follows:

"Sec. 2. (a) The Mayor shall withdraw any request for offers, and not issue any future request for offers, for the use of any District-owned or District-operated property for any child development program or child care program until the Mayor submits to the Council for a 30-day period of review, prior to any action, the following:

"(1) A comprehensive analysis of any proposed child day care services;

"(2) A detailed report on efforts being made to find employment with potential awardees, or any other entity, for separated Department of Parks and Recreation day care employees;

"(3) An examination of whether the District's laws on privatization (section 105b of the District of Columbia Procurement Practices Act of 1985, effective March 19, 1994 (D.C. Law 10-79;

D.C. Official Code § 2-301.05b)) have been followed; and

"(4) A detailed report on the future of special needs/developmental programs and care in the Department of Parks and Recreation and the District.

"(b) All day care services and child development programs that are proposed to be removed from the Department of Parks and Recreation during the fiscal year 2010, shall remain open until September 30, 2009."

Section 4(b) of D.C. Law 18-46 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2602 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 2602 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) addition, see § 2 of

Day Care Facility Emergency Act of 2009 (D.C. Act 18-97, May 27, 2009, 56 DCR).

For temporary (90 day) addition, see § 2 of Day Care Facility Congressional Review Emergency Act of 2009 (D.C. Act 18-152, July 30, 2009, 56 DCR 6340).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

CASE NOTES

Civil liability.

This act, providing for programs to protect children of working parents from neglect and inadequate care, does not create a special class of children for protection, nor does it establish a

special relationship on which District of Columbia civil liability could be predicated as an exception to the “public duty” doctrine. *Brown v. District of Columbia*, 122 WLR 641 (Super. Ct. 1994).

§ 4-402.01. Funding for day care provided by D.C. Public Schools.

(a) In Fiscal Year 2004, the Department may transfer no more than \$6 million to the D.C. Public Schools for the purpose of funding an after-school day care program pursuant to a memorandum of understanding. The memorandum of understanding shall include the following program requirements:

- (1) Participation in the program shall be based on TANF eligibility;
- (2) Verification of family income shall be required before a child may be enrolled in the program;
- (3) Priority shall be given to children of families actively participating in TANF;
- (4) Additional slots shall be allocated on the sliding scale set forth in § 4-405(b); and
- (5) Records documenting the costs of the program shall be maintained and provided to the Department on an annual basis, including:

(A) Verifiable data establishing the number of children enrolled by the program;

(B) Documentation that each enrolled child met the eligibility requirements for the program; and

(C) Reports documenting, for each month of operation, the funds expended in relation to service delivery.

(Sept. 19, 1979, D.C. Law 3-16, § 3a, as added Nov. 13, 2003, D.C. Law 15-39, § 2702, 50 DCR 5668.)

Legislative history of Law 15-39. — For Law 15-39, see notes following § 4-204.11.

Short title. — Short title of title XXVII of Law 15-39: Section 2701 of D.C. Law 15-39

provided that title XXVII of the act may be cited as the Day Care in Schools Eligibility Requirement Amendment Act of 2003.

§ 4-403. Payment of full cost by Department. [Repealed].

Repealed.

(Sept. 19, 1979, D.C. Law 3-16, § 4, 26 DCR 20; Mar. 16, 1989, D.C. Law 7-215, § 2, 36 DCR 517; June 22, 1990, D.C. Law 8-144, § 3(a), 37 DCR 2974; Mar. 6,

1991, D.C. Law 8-202, § 3(a), 37 DCR 7937; Apr. 13, 1999, D.C. Law 12-216, § 2(b), 46 DCR 281.)

Prior Codifications. — 1981 Ed., § 3-303.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(b) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

For temporary (225 day) amendment of section, see § 5 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 5 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 5 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 5 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 5 of the

Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary repeal of section, see § 2(b) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(b) of the Day Care Policy Congressional Review Emergency Amendment Act of 1999 (D.C. 13-12, February 8, 1999, 46 DCR 2330).

Legislative history of Law 12-216. — For legislative history of D.C. Law 12-216, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — D.C. Law 12-241 purported to substitute "TANF or POWER" for "AFDC" throughout the section; however, the repeal by D.C. Law 12-216, § 2(b) has been given effect herein.

§ 4-404. Supplemental payments by Department. [Repealed].

Repealed.

(Sept. 19, 1979, D.C. Law 3-16, § 5, 26 DCR 20; Sept. 29, 1982, D.C. Law 4-163, § 2(b), 29 DCR 3974; June 22, 1990, D.C. Law 8-144, § 3(b), 37 DCR 2974; Mar. 6, 1991, D.C. Law 8-202, § 3(b), 37 DCR 7937; Apr. 13, 1999, D.C. Law 12-216, § 2(c), 46 DCR 281.)

Prior Codifications. — 1981 Ed., § 3-304.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 2(c) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

For temporary (225 day) amendment of section, see § 5 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of section, see § 2(c) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(c) of the Day Care Policy Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-12, February 8, 1999, 46 DCR 2330).

For temporary amendment of section, see § 5 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June

9, 1998, 45 DCR 4270), § 5 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 5 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 5 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-216. — For legislative history of D.C. Law 12-216, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-201.01.

Editor's notes. — D.C. Law 12-241 purported to substitute "TANF or POWER" for "AFDC" in (6); however, the repeal by D.C. Law 12-216, § 2(c) has been given effect herein.

§ 4-404.01. Supplemental payments by the Mayor.

(a) The Mayor is hereby authorized to supplement the cost of child care services with District funds when appropriated and available for the following:

(1) Children of families who are receiving assistance under the TANF program and whose families are attempting through work activities to transition off the TANF program;

(2) Children of families who are at-risk of becoming dependent on the TANF program;

(3) Children of families who are low-income but working, as defined by the TANF program;

(4) Children receiving protective care services; and

(5) Children in foster care placement when the foster care provider is working, if only one foster care provider is in the home, when both foster care providers are working, if 2 foster care providers are in the home, and child care services are in the best interest of the child.

(b) Any child care funds available under title IV-E of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 et seq.), shall be the first source for reimbursement to the District for the cost of child care for children in foster care.

(c) The supplemental payment authorized by this section shall be paid, in accordance with a daily rate and sliding fee scale, directly to the child development center, child development home, relative, or in-home care giver actually providing services.

(Sept. 19, 1979, D.C. Law 3-16, § 5a, as added Apr. 13, 1999, D.C. Law 12-216, § 2(d), 46 DCR 281.)

Prior Codifications. — 1981 Ed., § 3-304.1.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(d) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

Emergency legislation. — For temporary addition of section, see § 2(d) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(d) of the Day Care Policy Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-12, February 8, 1999, 46 DCR 2330).

For temporary issuance of rules by the Mayor, see § 3 of the Day Care Policy Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-12, February 8, 1999, 46 DCR 2330).

Legislative history of Law 12-216. — For legislative history of D.C. Law 12-216, see Historical and Statutory Notes following § 4-401.

Editor's notes. — Mayor authorized to issue rules: Section 3 of D.C. Law 12-216 authorized the Mayor to issue rules to implement the provisions of this section, pursuant to Title 1 of the District of Columbia Administrative Procedures Act, D.C. Code § 2-501 et seq.

§ 4-405. Schedule of payments by parents.

(a) Parents who receive day care services pursuant to § 4-404 [repealed] shall pay a portion of services according to the sliding scale set forth in subsection (b) of this section.

(b)	Adjusted Income	Parent Fee (Percent of Child Care Paid by Parent)
Increment		
1	Under \$8,020	Flat Fee of \$2 per week
2	\$8,020 — \$9,012	5%
3	\$9,013 — \$10,005	10%
4	\$10,006 — \$10,998	15%
5	\$10,999 — \$11,991	20%
6	\$11,992 — \$12,984	25%
7	\$12,985 — \$13,977	30%
8	\$13,978 — \$14,970	35%
9	\$14,971 — \$15,963	40%
10	\$15,964 — \$16,956	45%
11	\$16,957 — \$17,949	50%
12	\$17,950 — \$18,942	55%
13	\$18,943 — \$19,935	60%
14	\$19,936 — \$20,928	65%
15	\$20,929 — \$21,921	70%
16	Over \$21,921	100%

(c) The fee schedule shall be effective April 1, 1990. The Mayor may revise the fee schedule by rule.

(Sept. 19, 1979, D.C. Law 3-16, § 6, 26 DCR 20; Mar. 5, 1981, D.C. Law 3-166, § 2, 27 DCR 5355; Sept. 29, 1982, D.C. Law 4-163, § 2(c), 29 DCR 3974; June 22, 1990, D.C. Law 8-144, § 3(c), 37 DCR 2974; Mar. 6, 1991, D.C. Law 8-202, § 3(c), 37 DCR 7937; Feb. 5, 1994, D.C. Law 10-68, § 11, 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 3-305. 1973 Ed., § 3-305.

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 3-166. — Law 3-166, the “Day Care Policy Act Amendment Act of 1980,” was introduced in Council and assigned Bill No. 3-381, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 28, 1980, and November 12, 1980, respectively. Signed by the Mayor on November 25, 1980, it was assigned Act No. 3-297 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-163. — For legislative history of D.C. Law 4-163, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 8-144. — For legislative history of D.C. Law 8-144, see Historical and Statutory Notes following § 4-403.

Legislative history of Law 8-202. — For legislative history of D.C. Law 8-202, see Historical and Statutory Notes following § 4-403.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 8-202, the “D.C. Family Support Act Federal Conformity Amendment Act of 1990”, Effective March 6, 1991, see Mayor’s Order 2000-157, October 12, 2000 (47 DCR 8683).

§ 4-406. Responsibility of Department for payment.

The Department shall be responsible for payment of day care fees to:

(1) A child development home, after admission of a particular child, for its part of the appropriate rate for up to 15 consecutive days for that child when absence is caused by illness of the child or a change in the parent's training status, provided the child is in regular attendance and the parent remains eligible or a space is being reserved;

(2) A child development home or child development center that has contracted with the Mayor to provide day care services and that has documented that services were provided (this payment shall include payment for District and federal holidays and snow days);

(3) An in-home caregiver, only for those days when the in-home caregiver is present in the home of the mother or caretaker relative and rendering services as agreed.

(Sept. 19, 1979, D.C. Law 3-16, § 7, 26 DCR 20; Mar. 15, 1985, D.C. Law 5-174, § 2(a), 32 DCR 743; Apr. 13, 1999, D.C. Law 12-216, § 2(e), 46 DCR 281.)

Prior Codifications. — 1981 Ed., § 3-306.
1973 Ed., § 3-306.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Day Care Policy Emergency Amendment Act of 1997 (D.C. Act 12-207, December 15, 1997, 44 DCR 353), § 2(e) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(e) of the Day Care Policy Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-12, February 8, 1999, 46 DCR 2330).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 5-174. — Law 5-174, the "Day Care Policy Act of 1979 Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-527, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-239 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-216. — For legislative history of D.C. Law 12-216, see Historical and Statutory Notes following § 4-401.

§ 4-407. Collection of overpayments.

An overpayment by the Department to a child development center, child development home, or to an in-home caregiver who is continuing to provide day care services shall be collectible in any amount.

(Sept. 19, 1979, D.C. Law 3-16, § 8, 26 DCR 20.)

Prior Codifications. — 1981 Ed., § 3-307.
1973 Ed., § 3-307.

Legislative history of Law 3-16. — For

legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

§ 4-408. Waiver of overpayments.

The collection of an overpayment of not more than \$25 may be waived for child development centers, child development homes, or in-home caregivers who are no longer providing day care services for the Department.

(Sept. 19, 1979, D.C. Law 3-16, § 9, 26 DCR 20.)

Prior Codifications. — 1981 Ed., § 3-308. legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.
Legislative history of Law 3-16. — For

§ 4-409. Contracts with licensed child development centers; payment for services.

(a) The Department shall, on an annual basis, enter into contracts or agreements with licensed child development centers to provide day care services for children described in § 4-404.01. Payment for such services shall be on the following basis:

(1) Subject to subsections (b) through (h) of this section, payments to child development centers for care of these children shall be made on a monthly basis according to the following rates:

(A) For full care other than that provided under subparagraph (B) of this paragraph, child development centers shall receive \$18 per day for each child, plus \$1 per day for each child to whom the child development center provides transportation.

(B) For full care provided only during summers and vacations to children who otherwise do not receive care under this section or who otherwise receive only part-time care, child development centers shall receive \$14.40 per day for each child.

(C) For part-time care, child development centers shall receive \$9 per day for each child.

(2) No child development center shall be paid more than its stated rate prior to the application of its sliding fee scale for children not eligible for subsidized care.

(3) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to establish differentiated payment rates for child development centers that reflect variations in the costs of providing services to children of different age groups which shall not be below the rates established pursuant to subsections (a)(1) and (h)(2) [sic] of this section.

(b) For child development centers that reserve at least 25% of their classroom capacity for children eligible for funding under this chapter, the Department shall, on or before August 1, 1979, for fiscal year 1980 and at least 90 days prior to the beginning of each subsequent fiscal year, specify the number of spaces it projects will be utilized by children eligible for funding under this chapter during the next fiscal year, and provide written notification of its projection to each such center.

(c) Payment shall be made by the Department to child development centers for all such spaces specified for reservation in accordance with subsection (b) of this section, so long as they remain available and are able to be utilized by children eligible for funding under this chapter.

(d) Reimbursement by the Department to child development centers providing services on a year-round basis shall be based upon a 260-day year.

(e) The Mayor shall report to the Council of the District of Columbia, by July 1st each year, what impact the cost of living has had on the provision of day

care services in the District during the preceding 12 months, and what the monthly utilization has been during that same period in each category of day care paid for by the District.

(f) The Department shall delegate the function of determining the eligibility of children to be served by each child development center whenever:

(1) The center has requested to perform this function; and

(2) The Department has determined, based on the center's current performance of this function or otherwise, that the center has exhibited a reasonable capability to carry out such function.

(g) The Department shall retain all fees collected from parents of eligible children pursuant to subsection (a) of this section as specified by the fee scale set forth in § 4-405.

(h) The rates established pursuant to subsection (a) of this section may be adjusted by the Mayor through promulgation of a rule in accordance with the rulemaking provisions of subchapter I of Chapter 5 of Title 2.

(Sept. 19, 1979, D.C. Law 3-16, § 10, 26 DCR 20; Mar. 15, 1985, D.C. Law 5-174, § 2(b), 32 DCR 743; Dec. 16, 1987, D.C. Law 7-57, § 2(a), 34 DCR 7081; July 29, 1988, D.C. Law 7-136, § 2(a), 35 DCR 4259; Aug. 17, 1991, D.C. Law 9-28, § 2(a), 38 DCR 4211; Apr. 7, 1995, D.C. Law 11-2, § 2(a), 42 DCR 1068; Sept. 26, 1995, D.C. Law 11-52, § 503(a), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 9, 44 DCR; Apr. 13, 1999, D.C. Law 12-216, § 2(f), 46 DCR 281.)

Prior Codifications. — 1981 Ed., § 3-309. 1973 Ed., § 3-309.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 103(a) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(a) of Day Care Policy Temporary Amendment Act of 1994 (D.C. Law 10-198, March 14, 1995, law notification 42 DCR 1515).

For temporary (225 day) amendment of section, see § 3 of Public Assistance and Day Care Policy Temporary Amendment Act of 1994 (D.C. Law 10-208, March 14, 1995, law notification 42 DCR 1568).

For temporary (225 day) amendment of section, see § 503(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2(f) of Day Care Policy Temporary Amendment Act of 1998 (D.C. Law 12-72, March 20, 1998, law notification 45 DCR 2107).

Emergency legislation. — For temporary amendment of section, see § 103(a) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390). Section 301 of D.C. Act 9-37 provided that Section 103 shall apply as of October 1, 1990 and until the effective date of the Omnibus Budget Support Emergency Act of 1991 and

beginning on the effective date of the Omnibus Budget Support Emergency Act of 1991 the rates for licensed child development centers, child development homes, and in-home caregivers in effect pursuant to the Day Care Policy Act shall revert to the rates in effect on September 1, 1990.

For temporary amendment of section, see § 103(a) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(a) of the Day Care Policy Emergency Amendment Act of 1994 (D.C. Act 10-319, August 4, 1994, 41 DCR 5367), § 2(a) of the Day Care Policy Congressional Adjournment Emergency Amendment Act of 1994 (D.C. Act 10-330, October 21, 1994, 41 DCR 7162), and § 2(a) of the Day Care Policy Congressional Adjournment Emergency Amendment Act of 1995 (D.C. Act 11-2, January 18, 1995, 42 DCR 539).

For temporary amendment of section, see § 3(a) of the Public Assistance and Day Care Policy Emergency Amendment Act of 1994 (D.C. Act 10-326, October 21, 1994, 41 DCR 7153).

For temporary amendment of section, see § 503(a) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 401 of the Omnibus Budget Support Emer-

agency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 503(a) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 2(f) of the Day Care Policy Emergency Amendment Act of 1997 (D.C. Act 12-207, December 15, 1997, 45 DCR 353), § 2(f) of the Day Care Policy Emergency Amendment Act of 1998 (D.C. Act 12-509, November 10, 1998, 45 DCR 8146), and § 2(f) of the Day Care Policy Congressional Emergency Amendment Act of 1999 (D.C. Act 13-12, 46 DCR 2330).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 5-174. — For legislative history of D.C. Law 5-174, see Historical and Statutory Notes following § 4-406.

Legislative history of Law 7-57. — Law 7-57, the “Day Care Policy Act of 1979 Amendment Temporary Act of 1987,” was introduced in Council and assigned Bill No. 7-305. The Bill was adopted on first and second readings on September 29, 1987 and October 13, 1987, respectively. Signed by the Mayor on October 26, 1987, it was assigned Act No. 7-90 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-136. — Law 7-136, the “Day Care Policy Act of 1979 Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-291, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 3, 1988 and May 17, 1988, respectively. Signed by the Mayor on June 1, 1988, it was assigned Act No. 7-186 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-28. — Law 9-28, the “Day Care Policy Budget Conformity Amendment Act of 1991,” was introduced in

Council and assigned Bill No. 9-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-55 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-2. — Law 11-2, the “Day Care Policy Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-37, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on February 17, 1995, it was assigned Act No. 11-9 and transmitted to both Houses of Congress for its review. D.C. Law 11-2 became effective on April 7, 1995.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-216. — For legislative history of D.C. Law 12-216, see Historical and Statutory Notes following § 4-401.

§ 4-410. Payments to child development homes and to in-home caregivers.

(a) Payments to child development homes and to in-home caregivers shall be made according to the following rates:

(1) For full care:

(A) Child development homes shall receive \$12 per day for each child.

(B) In-home caregivers shall receive \$7.25 per day for each child for care during the day and \$8.25 per night for each child for night care.

(2) For part-time care:

(A) Child development homes shall receive \$6 per day for each child for before and after school care.

(B) In-home caregivers shall receive \$5.75 per day for each child for

before and after school care and \$4 per night for each child for night care of less than 6 hours.

(a-1) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to establish differentiated payment rates for child development homes and in-home caregivers that reflect variations in the cost of providing services to children of different age groups which shall not be below the rates established pursuant to subsections (a) and (b)(2) [sic] of this section.

(b) The rates established pursuant to subsection (a) of this section may be adjusted by the Mayor through promulgation of a rule in accordance with the rulemaking provisions of subchapter I of Chapter 5 of Title 2.

(Sept. 19, 1979, D.C. Law 3-16, § 11, 26 DCR 20; Aug. 2, 1983, D.C. Law 5-23, § 2, 30 DCR 3339; Dec. 16, 1987, D.C. Law 7-57, § 2(b), 34 DCR 7081; July 29, 1988, D.C. Law 7-136, § 2(b), 35 DCR 4259; Aug. 17, 1991, D.C. Law 9-28, § 2(b), 38 DCR 4211; Apr. 7, 1995, D.C. Law 11-2, § 2(b), 42 DCR 1068; Sept. 26, 1996, D.C. Law 11-52, § 503(b), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 3-310. 1973 Ed., § 3-310.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 103(b) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2(b) of Day Care Policy Temporary Amendment Act of 1994 (D.C. Law 10-198, March 14, 1995, law notification 42 DCR 1515).

For temporary (225 day) amendment of section, see § 3(b) of Public Assistance and Day Care Policy Temporary Amendment Act of 1994 (D.C. Law 10-208, March 14, 1995, law notification 42 DCR 1568).

For temporary (225 day) amendment of section, see § 503(b) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 103(b) of the Omnibus Budget Support Emergency Act of 1991 (D.C. Act 9-37, May 17, 1991, 38 DCR 3390).

Section 301 of D.C. Act 9-37 provided that Section 103 shall apply as of October 1, 1990 and until the effective date of the Omnibus Budget Support Emergency Act of 1991 and beginning on the effective date of the Omnibus Budget Support Emergency Act of 1991 the rates for licensed child development centers, child development homes, and in-home caregivers in effect pursuant to the Day Care Policy Act shall revert to the rates in effect on September 1, 1990.

For temporary amendment of section, see § 103(b) of the Omnibus Budget Support Congressional Recess Emergency Act of 1991 (D.C. Act 9-69, July 24, 1991, 38 DCR 4945).

For temporary amendment of section, see § 2(b) of the Day Care Policy Emergency

Amendment Act of 1994 (D.C. Act 10-319, August 4, 1994, 41 DCR 5367), § 2(b) of the Day Care Policy Congressional Adjournment Emergency Amendment Act of 1994 (D.C. Act 10-330, October 21, 1994, 41 DCR 7162), and § 2(b) of the Day Care Policy Congressional Adjournment Emergency Amendment Act of 1995 (D.C. Act 11-2, January 18, 1995, 42 DCR 539).

For temporary amendment of section, see § 3(b) of the Public Assistance and Day Care Policy Emergency Amendment Act of 1994 (D.C. Act 10-326, October 21, 1994, 41 DCR 7153).

For temporary amendment of section, see § 503(b) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 503(b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 5-23. — Law 5-23, the "Day Care Policy Act of 1979 Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-163, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-40 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-57. — For legislative history of D.C. Law 7-57, see Historical and Statutory Notes following § 4-409.

Legislative history of Law 7-136. — For legislative history of D.C. Law 7-136, see Historical and Statutory Notes following § 4-409.

Legislative history of Law 9-28. — For legislative history of D.C. Law 9-28, see Historical and Statutory Notes following § 4-409.

Legislative history of Law 11-2. — For legislative history of D.C. Law 11-2, see Historical and Statutory Notes following § 4-409.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 4-409.

§ 4-411. Standards for in-home care.

Guidelines and standards for in-home care shall be as follows:

(1) In-home care within the child's own home, by an in-home caregiver, shall be used only when other day care plans are not feasible and in-home care offers greater benefits to the mother or other responsible relative and the child;

(2) In-home care may be provided, as appropriate and available, for children of eligible persons in training and during their subsequent employment, and for TANF or POWER children living with caretaker relatives (not parents) when day or night care is required due to employment of the caretaker relative;

(3) In-home care shall be arranged by mutual agreement between the child's own mother or caretaker relative, the in-home caregiver, and the Department;

(4) Selection of the in-home caregiver shall be made by the parent, subject to final approval by the Department;

(5) The Department shall make direct payments to the in-home caregiver for services rendered;

(6) The in-home caregiver shall be of an age between 21 and 70 years;

(7) The in-home caregiver shall furnish the Department with the same medical certification of good health as that required for licensed caregivers pursuant to § 403 (j) of Regulation No. 74-34 (Child Development Facilities Regulation). Further, the in-home caregiver shall furnish the Department with medical certification of good health for any child of her own whom she brings to the home of the mother or caretaker relative;

(8) Duties of the in-home caregiver shall be limited to supervision of the child or children in her care, preparation and serving of appropriate meals or snacks, and washing of dishes and utensils used in the preparation of food;

(9) The in-home caregiver shall have no more than 2 preschool children of her own;

(10) The in-home caregiver shall not care for children other than her own and the child or children of the TANF or Power mother or caretaker relative;

(11) If the in-home caregiver brings her own children to the home of the TANF or POWER mother or caretaker relative, an agreement shall be reached between them as to the amount of food she brings for their needs; and

(12) The in-home caregiver shall have prior experience in child care, either with her own children or siblings.

(Sept. 19, 1979, D.C. Law 3-16, § 12, 26 DCR 20; Apr. 20, 1999, D.C. Law 12-241, § 5, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-311.
1973 Ed., § 3-311.

Temporary Amendment of Section. —
For temporary (225 day) amendment of section,

see § 5 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary amendment of section, see § 5 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 5 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 5 of the Self-Sufficiency Promotion Congressional Review Emergency

Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 5 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-403.

§ 4-412. Compliance with District regulation.

(a) Any child development center or child development home that contracts or agrees with the Department to provide day care shall comply with all applicable provisions of Regulation No. 74-34 (Child Development Facilities Regulation).

(b) Licenses issued to child development facilities or child development homes under this section or any other provision of law shall be issued as a Public Health: Child Health and Welfare endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Sept. 19, 1979, D.C. Law 3-16, § 13, 26 DCR 20; Apr. 20, 1999, D.C. Law 12-261, § 2003(f), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(e), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 3-312. 1973 Ed., § 3-312.

Effect of amendments. — D.C. Law 15-38, in subsec. (b), substituted “Public Health: Child Health and Welfare endorsement to a basic business license under the basic” for “Class A Public Health: Child Health and Welfare endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(e) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced

in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

§ 4-413. Monitoring day care services; publication of procedures; compliance with federal regulations.

(a) The Department shall be responsible for monitoring the provision of day care services to assure that adequate services are provided to the children and that contractual and other agreements are met.

(b) The Department shall develop and publish procedures that will assure that any licensed child development center or home in the District of Columbia can apply to provide day care services to eligible children.

(c) Child development facilities contracting or agreeing with the Department to provide day care, which are included in the programs for federal reimbursement, shall comply with all applicable federal regulations and requirements.

(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter.

(Sept. 19, 1979, D.C. Law 3-16, § 14, 26 DCR 20; Mar. 2, 2007, D.C. Law 16-192, § 5182, 53 DCR 6899.)

Prior Codifications. — 1981 Ed., § 3-313.
1973 Ed., § 3-313.

Effect of amendments. — D.C. Law 16-192 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Day Care Grant-Making and Rulemaking Temporary Amendment Act of 2006 (D.C. Law 16-156, September 19, 2006, law notification 53 DCR 7928).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Day Care Grant-Making and Rulemaking Emergency Amendment Act of 2006 (D.C. Act 16-380, May 19, 2006, 53 DCR 4405).

For temporary (90 day) amendment of section, see § 5182 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5182 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5182 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 16-192. — Law 16-192, the “Fiscal Year Budget Support Act of 2006”, was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Short title. — Short title: Section 5181 of D.C. Law 16-192 provided that subtitle L of title V of the act may be cited as the “Day Care Improvement Amendment Act of 2006”.

§ 4-414. Authorization of grants to develop satellite child development home programs.

The Department is hereby authorized to make grants to private agencies that work with child development homes and to licensed child development centers for the purpose of developing or operating satellite child development home programs.

(Sept. 19, 1979, D.C. Law 3-16, § 15, 26 DCR 20; Mar. 15, 1985, D.C. Law 5-174, § 2(c), 32 DCR 743.)

Prior Codifications. — 1981 Ed., § 3-314.
1973 Ed., § 3-314.

Legislative history of Law 3-16. — For legislative history of D.C. Law 3-16, see Historical and Statutory Notes following § 4-401.

Legislative history of Law 5-174. — For legislative history of D.C. Law 5-174, see Historical and Statutory Notes following § 4-406.

CHAPTER 5. COMPENSATION OF VICTIMS OF VIOLENT CRIME.

Subchapter I. General

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Subchapter I-A. Shelter and Transitional Housing

- 4-521. Shelter and Transitional Housing for Victims of Domestic Violence Fund.

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- 4-531 to 4-545. [Repealed].

*Subchapter I. General.***§ 4-501. Definitions.**

For the purposes of this chapter the term:

- (1) "Board" means the Crime Victims Compensation Appeals Board.
- (2) "Claimant" means a person who makes a claim for compensation under this chapter and who is a:
 - (A) Victim;
 - (B) Secondary victim; or
 - (C) Person acting on behalf of a victim or a secondary victim, but not including a provider of services.
- (3) "Collateral source" means a source of benefits or compensation available to a claimant for economic loss resulting from a crime of violence. This term includes payments or benefits from:
 - (A) The offender;
 - (B) The United States, District of Columbia, a state or territory of the United States or its political subdivisions, or an agency of the foregoing, including Social Security, Medicare, Medicaid, Workers' Compensation, Public Employees' Disability Compensation, the Department of Human Services, the Department of Health, the Child and Family Services Agency, and Court Social Services;
 - (C) A wage continuation program of an employer;
 - (D) A contract of life, health, disability, liability, or fire and casualty insurance, or a contract providing prepaid hospital or health care benefits;
 - (E) Proceeds of a lawsuit brought as a result of the crime; or
 - (F) Life insurance proceeds of more than \$50,000.
- (4) "Commission" means the Crime Victims Compensation Advisory Commission.
- (5) "Court" means the Superior Court of the District of Columbia.

(6) “Crime of violence” or “crime” means the offense of, or the attempt to commit the offense of, an act of terrorism, use, dissemination, or detonation of a weapon of mass destruction, manufacture or possession of a weapon of mass destruction, arson, assault, assault with a dangerous weapon, aggravated assault, assault on a police officer, assault with intent to kill, assault with intent to commit any offense, burglary, stalking, threats, negligent homicide, sexual abuse, kidnapping, maliciously disfiguring another, manslaughter, murder, mayhem, riot, robbery, carjacking, cruelty to children, unlawful use of an explosive, forced labor, benefitting financially from human trafficking, using a minor in a sexual performance, promoting a sexual performance by a minor, attending or possessing a sexual performance by a minor, trafficking in labor or commercial sex acts, sex trafficking of children, a felony violation of an act codified in Chapter 27 of Title 22, where a person was compelled to engage in prostitution or was a minor; a violation of an act codified in Title 50 that resulted in death or bodily injury to a person, including these offenses when motivated by bias as provided by Chapter 37 of Title 22, or any violation of §§ 50-2201.04 and 50-2201.05, notwithstanding that the offender lacked the capacity to commit the offense by reason of infancy, insanity, intoxication, or otherwise. These terms include an offense where the perpetrator and victim are members of the same family or household, an offense whether prosecuted under the District of Columbia Official Code or the United States Code, and a terrorist act or act of mass violence as defined in 18 U.S.C. § 2331, committed in the District of Columbia against any person or outside of the United States against a resident of the District of Columbia. A crime occurs whether or not any person is identified, arrested, prosecuted, or convicted. Unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or hearing has been ordered, the conviction of a person whose acts gave rise to the claim is conclusive evidence that a crime was committed.

(7)(A) “Economic loss” means:

- (i) Reasonable medical expenses incurred, whether provided in the District of Columbia or elsewhere;
- (ii) Reasonable funeral and burial expenses, including the reasonable cost of cremation or other chosen method of interment;
- (iii) The reasonable cost of temporary emergency food and housing not exceeding 120 days;
- (iv) Loss of income or support incurred as a direct or indirect result of an injury or death;
- (v) Loss of a victim’s services by a secondary victim, including housekeeping and child care services;
- (vi) In the case of secondary victims, reasonable psychiatric, psychological, or mental health counseling expenses incurred as a direct result of the crime;
- (vii) Reasonable expenses incurred by the victim for physical or occupational therapy and rehabilitation;
- (viii) The reasonable cost of cleaning the crime scene;
- (ix) Unless the victim is deceased, the replacement value of the victim’s clothing that is held for evidentiary purposes;

(x) The reasonable cost of replacing doors, windows, locks or other items to secure the victim's home or other place of residence;

(xi) The reasonable cost of a rental car for the period of time that an automobile is being held by the police as evidence or to collect evidence;

(xii) Reasonable moving expenses where necessary for health or safety; and

(xiii) Reasonable transportation expenses incurred by the victim or secondary victim to participate in court proceedings, to participate in the investigation or prosecution of the case, or to obtain the services described in sub-subparagraphs (i), (vi), or (vii) of this subparagraph, or paragraph (9) of this subsection, or to obtain any other services required as a direct result of the crime.

(B) "Economic loss" does not mean:

(i) Pain and suffering;

(ii) The value of any property damaged or taken during the crime; or

(iii) Any services not described in subparagraph (A) of this paragraph.

(8) "Fund" means the Crime Victims Compensation Fund.

(9) "Medical expenses" include:

(A) Ambulance, hospital, surgical, medical, nursing, dental, optometric, ophthalmologic, chiropractic, podiatric, in-patient mental health, and pregnancy-related care;

(B) Medical, dental, hearing, and surgical supplies;

(C) Crutches and prosthetic devices taken, lost, or destroyed during the commission of the crime, as well as new prosthetic devices which became necessary as a direct result of the crime and training in their use; and

(D) Out-patient mental health counseling expenses which became necessary as a direct result of the crime and which are provided by a:

(i) Licensed psychiatrist or psychologist;

(ii) Licensed social worker; or

(iii) Licensed marriage, family, or child counselor practicing within the scope of licensure.

(10) "Personal injury" means physical injury, emotional trauma, or both.

(11) "Program" means the Crime Victims Compensation Program.

(12) "Provider of services" means a person or entity providing services pursuant to paragraphs (7) and (9) of this subsection.

(13) "Secondary victim" means a:

(A) Victim's spouse, children, including biological, step, and adopted, grandchildren, parents, stepparents, siblings, half siblings, or spouse's parents;

(B) Person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime;

(C) Person who is a survivor of a victim and who was wholly or partially dependent upon the victim for care and support at the time of the commission of the crime upon which the claim is based, including a child of the victim born after the victim's death;

(D) Person who legally assumes the obligation, or who voluntarily pays

the medical expenses, or in the event of death caused by the crime, funeral and burial expenses, incurred as a direct result thereof;

(E) Person with close ties to the victim; or

(F) Person who witnessed the crime.

(14) "Victim" means a person who suffers personal injury or death in the District of Columbia, a person who is a resident of the District of Columbia and suffers personal injury or death as a result of a terrorist act or act of mass violence committed outside of the United States, or a person who is a resident of the District of Columbia and who suffers personal injury or death outside the District of Columbia in a state that does not have a crime victims compensation program that is eligible for funding under the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. § 10601 et seq.), as a direct result of:

(A) A crime;

(B) Assisting lawfully to apprehend a person reasonably suspected of committing or attempting to commit a crime;

(C) Assisting a person against whom a crime has been committed or attempted, if the assistance was rendered in a reasonable manner;

(D) Attempting to prevent the commission of a crime; or

(E) A violation of §§ 50-2201.04 and 50-2201.05, or a comparable state law regarding driving infractions.

(15) "Victims assistance grants agency" means the District of Columbia agency that is responsible for the administration of federal funds received for crime victims assistance under the Victims of Crime Act of 1984, approved October 12, 1984 (98 Stat. 2170; 42 U.S.C. § 10601 et seq.).

(Apr. 9, 1997, D.C. Law 11-243, § 2, 44 DCR 1142; Oct. 19, 2000, D.C. Law 13-172, § 202(a), 47 DCR 6308; Oct. 17, 2002, D.C. Law 14-194, § 151, 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 31, 51 DCR 881; Oct. 23, 2010, D.C. Law 18-239, § 201(a), 57 DCR)

Prior Codifications. — 1981 Ed., § 3-421.

Effect of amendments. — D.C. Law 13-172, in subpar. (3)(B), substituted "Public Employees" Disability Compensation, the Department of Human Services, the Department of Health, the Child and Family Services Agency, and Court Social Services" for "and Public Employees' Disability Compensation"; in par. (6) substituted "assault, assault with a dangerous weapon, aggravated assault, assault on a police officer, assault with intent to kill, assault with intent to commit any offense, burglary, stalking, threats," for "assault"; rewrote par. (7), which had read:

" 'Economic loss' means, except for pain and suffering:

"(A) Reasonable medical expenses incurred, whether provided in the District of Columbia or elsewhere;

"(B) Funeral and burial expenses, including the reasonable cost of cremation or other chosen method of interment, not exceeding \$3,000 per death;

"(C) In the case of battered partners or children, the cost of temporary emergency housing not exceeding 90 days;

"(D) Loss of income or support incurred as a direct or indirect result of an injury or death;

"(E) Loss of a victim's services by a secondary victim, including housekeeping and child care services;

"(F) In the case of secondary victims, reasonable psychiatric, psychological, or mental health counseling expenses incurred as a direct result of the crime;

"(G) Reasonable expenses incurred by the victim for physical or occupational therapy and rehabilitation;

"(H) The cost of cleaning the crime scene, not exceeding \$1,000; and

"(I) Unless the victim is deceased, the replacement value of the victim's clothing that is held for evidentiary purposes."; rewrote par. (13), which had read:

" 'Secondary victim' means a:

"(A) Victim's spouse, children, including natural born, step, and adopted, grandchildren,

parents, stepparents, siblings, half siblings, or spouse's parents;

"(B) Person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime;

"(C) Person who is a survivor of a victim and who was wholly or partially dependent upon the victim for care and support at the time of the commission of the crime upon which the claim is based, including a child of the victim born after the victim's death; or

"(D) Person who legally assumes the obligation, or who voluntarily pays the medical expenses, or in the event of death caused by the crime, funeral and burial expenses, incurred as a direct result thereof."; and added par. (15), defining victims assistance grants agency.

D.C. Law 14-194, in par. (6), inserted "an act of terrorism, use, dissemination, or detonation of a weapon of mass destruction, manufacture or possession of a weapon of mass destruction" following "to commit the offense of,".

D.C. Law 15-105, in par. (6), validated a previously made technical correction.

D.C. Law 18-239, in par. (6), substituted "unlawful use of an explosive, forced labor, benefitting financially from human trafficking, using a minor in a sexual performance, promoting a sexual performance by a minor, attending or possessing a sexual performance by a minor, trafficking in labor or commercial sex acts, sex trafficking of children, a felony violation of an act codified in Chapter 27 of Title 22, where a person was compelled to engage in prostitution or was a minor; a violation of an act codified in Title 50 that resulted in death or bodily injury to a person," for "unlawful use of an explosive,".

Emergency legislation. — For temporary addition of chapter, see § 2 through 19 of the Victims of Violent Crime Compensation Emergency Act of 1996 (D.C. Act 11-447, December 5, 1996, 43 DCR 6669), and § 2-19 of the Victims of Violent Crime Compensation Congressional Review Emergency Act of 1997 (D.C. Act 12-34, March 11, 1997, 44 DCR 1915).

For temporary (90-day) amendment of section, see § 202(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 202(a) of the Fiscal Year 2001 Bud-

get Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-243. — Law 11-243, the "Victims of Violent Crime Compensation Act of 1996," was introduced in Council and assigned Bill No. 11-657, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-503 and transmitted to both Houses of Congress for its review. D.C. Law 11-243 became effective on April 9, 1997.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-194. — Law 14-194, the "Omnibus Anti-Terrorism Act of 2002", was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

Legislative history of Law 18-239. — Law 18-239, the "Prohibition Against Human Trafficking Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-70, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 16, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 21, 2010, it was assigned Act No. 18-444 and transmitted to both Houses of Congress for its review. D.C. Law 18-239 became effective on October 23, 2010.

§ 4-502. Establishment of a Crime Victims Compensation Program.

There is established a Crime Victims Compensation Program ("Program") that shall administer all funds from all sources for the purpose of investigating and, where appropriate, compensating the claims of victims of violent crime in the District of Columbia.

(Apr. 9, 1997, D.C. Law 11-243, § 3, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-422.

Emergency legislation. — See note to § 4-501.

For temporary (90 day) enactment, see § 3022 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactment of section, see § 3022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactment, see § 3022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Short title. — Short title: Section 3021 of D.C. Law 16-192 provided that subtitle B of title III of the act may be cited as the “Victims of Domestic Violence Grant-Making Act of 2006”.

Editor’s notes. — Grant-making authority for assisting domestic violence victims: Section 3022 of D.C. Law 16-192 provided: “Beginning in fiscal year 2007, the Mayor is authorized to issue grants from local funds received for the Office of Victim Services to assist victims of domestic violence.”

§ 4-503. Administration of Program.

(a) The administration of the Program is hereby designated to the Superior Court of the District of Columbia (“Court”), which shall issue rules and regulations as are necessary to carry out the provisions and purposes of this chapter.

(b) All records and computer software relating to the functions of the Program as originally established by the Victims of Violent Crime Compensation Act of 1981, effective April 6, 1982 (D.C. Law 4-100; § 4-531 et seq.) [repealed], are hereby transferred to the Court for the exclusive purpose of operating the Program.

(c) The Court shall:

(1) Investigate claims filed pursuant to this chapter;

(2) Obtain from an agency or department of the District of Columbia government or the United States government information, data, and assistance that will enable the Court to determine if a crime was committed or attempted and whether the claimant is eligible for compensation under this chapter;

(3) Process and maintain claims in the order they are filed, including claims previously filed pursuant to the Victims of Violent Crime Compensation Act of 1981, effective April 6, 1982 (D.C. Law 4-100; § 4-531 et seq.) [repealed];

(4) Determine each claim filed pursuant to this chapter and reinvestigate or reopen cases when necessary;

(5) Require and direct medical examination of victims or secondary victims when necessary;

(6) Publicize the existence of the Program and the procedure for obtaining compensation under the Program through the Court and the Crime Victims Compensation Appeals Board (“Board”), the District of Columbia Metropolitan Police Department, the U.S. Attorney’s Office, the Corporation Counsel of the District of Columbia, and other public or private agencies, organizations, and service providers; and

(7) Provide printed informational materials, including brochures and posters, in both English and Spanish.

(Apr. 9, 1997, D.C. Law 11-243, § 4, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-423.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

References in text. — “The Victims of Violent Crime Compensation Act of 1981, effective April 6, 1982 (D.C. Law 4-100; D.C. Code § 3-401 et seq.),” referred to in (b) and (c)(3), was repealed by D.C. Law 11-243, § 20, effective April 9, 1997.

§ 4-504. Crime Victims Compensation Advisory Commission; establishment; membership; duties.

(a) A Crime Victims Compensation Advisory Commission (“Commission”) is established and shall consist of 15 members appointed by the Chief Judge of the Court. The Chief Judge shall designate one of the members as the Commission’s Chairperson. The Chief Judge may make an appointment to fill an unexpired term.

(b) The Commission’s members shall serve for a term of 3 years and shall be eligible for reappointment. The members shall serve without compensation. The members shall elect any additional officers necessary for the efficient discharge of their duties.

(c) The Commission shall be composed of:

(1) The Chairperson of the Committee on the Judiciary of the Council of the District of Columbia or that person’s designee;

(2) One representative from the Office of the Corporation Counsel;

(3) One representative from the Victim Witness Assistance Unit of the U.S. Attorney’s Office;

(4) One person engaged full-time in law enforcement;

(5) One member of the Public Defender Service for the District of Columbia;

(6) One hospital staff person involved with emergency services;

(7) One representative of the District of Columbia Department of Corrections;

(8) One person licensed to provide mental health counseling;

(9) One crime victim or survivor;

(10) One member of the public who has demonstrated a knowledge of, and sensitivity to, victim issues; and

(11) Five victim service providers representing victims of homicide, sexual assault, domestic violence, child abuse, and drunk driving.

(d) The Commission shall:

(1) Provide information, training, and technical assistance to the Court and be available to consult with and advise the Court on rules and regulations for the administration of the Program;

(2) Develop ongoing public awareness efforts and assist the Court in publicizing the Program; and

(3) Review the annual report submitted by the Court to the Council of the District of Columbia, advise the Council of deficiencies in the Program, and suggest necessary changes.

(Apr. 9, 1997, D.C. Law 11-243, § 5, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-424.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-505. Crime Victims Compensation Appeals Board; establishment; membership; duties.

(a) A Crime Victims Compensation Appeals Board (“Board”) is established in the Court. The Chief Judge shall appoint 5 members to the Board from among the membership of the Commission. Board members shall serve at the Chief Judge’s pleasure, reflect a variety of disciplines, and include at least 1 attorney. The Chief Judge shall designate 1 member to serve as the Board’s Chairperson, and may appoint qualified members of the Commission to serve as alternates on the Board when Board members are not available.

(b) Board members shall serve without compensation but may receive reimbursement for expenses in a manner and amount to be determined by the Court.

(c) The Board shall meet at least quarterly to hear appeals in contested cases as provided in § 4-517(d).

(Apr. 9, 1997, D.C. Law 11-243, § 6, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-425.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-506. Eligibility for compensation.

(a) A victim or secondary victim is eligible to receive compensation under this chapter if he or she:

- (1) Suffered personal injury as a result of a crime;
- (2) Filed a claim under this chapter within 1 year after the crime occurred or 1 year after learning of the Program with an adequate showing that the delay in learning of the Program was reasonable; and
- (3) Reported the crime to a law enforcement office within 7 days of its occurrence. If the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made.

(b) The offender shall not be unjustly enriched by an award of compensation to the claimant, except that this requirement may be waived in cases involving extraordinary circumstances where the interests of justice so require.

(c) Notwithstanding subsection (a)(3) of this section, a victim who has been sexually abused or subjected to unlawful sexual conduct, domestic violence, or cruelty to children and who does not report the crime to the local police department, may:

- (1) In the case of domestic violence victims, satisfy the reporting requirement by seeking a civil protection order from the Corporation Counsel of the District of Columbia;
- (2) In the case of sexual assault victims, satisfy the reporting requirement by seeking a sexual assault examination from a medical treatment facility; and

(3) In the case of a victim of cruelty to children, satisfy the reporting requirement by the filing of a neglect petition by the District of Columbia in the Superior Court.

(d) The time limit requirements of this section may be waived for good cause shown, including compelling health or safety concerns.

(Apr. 9, 1997, D.C. Law 11-243, § 7, 44 DCR 1142; Oct. 19, 2000, D.C. Law 13-172, § 202(b), 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 3-426.

Effect of amendments. — D.C. Law 13-172, in subsec. (c), substituted “, domestic violence, or cruelty to children” for “or domestic abuse”; in par. (c)(1) substituted “violence” for “abuse” and struck the word “and” at the end of the paragraph; in par. (c)(2) substituted “; and” for the period; and added par. (c)(3), relating to reporting requirements.

Emergency legislation. — See note to § 4-501.

For temporary (90-day) amendment of section, see § 202(b) of the Fiscal Year 2001 Bud-

get Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 202(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-501.

§ 4-507. Awards of compensation.

(a) The Court shall award compensation in an amount equal to the claimant's economic loss, decreased by the amount available to the claimant from collateral sources.

(b) The Court shall not award compensation in an amount exceeding \$25,000 per victimization.

(c) The Court shall calculate awards in a fair and equitable manner.

(d) The payment of compensation may provide for apportionment, the holding of the compensation or any part thereof in trust, payment in a lump sum or periodic installments, or payment directly to the provider of medical services or economic loss expenses.

(e) An award is not subject to enforcement, attachment, or garnishment, except that an award may be subject to a claim of a creditor if the cost of products, services, or accommodations included in the award were covered by the creditor.

(f) If a claimant is awarded compensation prior to the sentencing of an offender convicted of the crime which was the subject of the claim, the Court shall notify the sentencing judge of the amount of the award, notwithstanding that the files and records of the claim remain otherwise confidential as provided in § 4-511. Restitution ordered for an offense that was the basis for an award under this chapter, up to the amount of the award, shall be payable directly to the Fund as provided in § 4-509.

(g) Eligibility for public benefits shall not be affected by the receipt of crime victims compensation funds.

(Apr. 9, 1997, D.C. Law 11-243, § 8, 44 DCR 1142; Oct. 19, 2000, D.C. Law 13-172, § 202(c), 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 3-427.

Effect of amendments. — D.C. Law 13-172, in subsec. (b), substituted “exceeding \$25,000 per victimization” for “exceeding \$25,000”, and added subsec. (g), relating to eligibility for benefits.

Emergency legislation. — See note to § 4-501.

For temporary (90-day) amendment of section, see § 202(c) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 202(c) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-501.

CASE NOTES

ANALYSIS

Claimant's conduct.

Other compensation.

Review.

Claimant's conduct.

Claimant's conduct after prosecutor declined to prosecute alleged assailant was irrelevant to determining claimant's entitlement to benefits under Victims of Violent Crime Compensation Act where claimant's alleged failure to cooperate with legal authorities did not occur until prosecutor decided not to prosecute. D.C. Code 1981, § 3-403(c)(3). *Randall v. District of Columbia Dep't of Employment Services*, 551 A.2d 90, 1988 D.C. App. LEXIS 217 (1988).

Other compensation.

Receipt of 75% of base pay from workers' compensation by victim of attempted armed robbery did not bar recovery under the Victims of Violent Crime Compensation Act (VVCCA). D.C. Code 1981, §§ 3-401(2)(B), 3-403(b)(repealed). *Mayo v. District of Colum-*

bia Dep't of Empl. Servs., 738 A.2d 807, 1999 D.C. App. LEXIS 228 (1999).

Review.

On review of hearing examiner's recommendation that claimant was eligible to receive benefits under Victims of Violent Crime Compensation Act, acting deputy director for Labor Standards of Department of Employment Services was bound by hearing examiner's findings of fact. D.C. Code 1981, §§ 3-401 et seq., 3-403(c)(3). *Randall v. District of Columbia Dep't of Employment Services*, 551 A.2d 90, 1988 D.C. App. LEXIS 217 (1988).

Basis of Department of Employment Services' decision to deny crime victim's parent's claims for loss of support and loss of services under the Victims of Violent Crime Compensation Act could not be adequately determined on the record and remand was required for amplification and possible further proceedings. D.C. Code 1981, § 3-401(1)(C), (5)(B). *Morris v. District of Columbia Dep't of Employment Services*, 530 A.2d 683, 1987 D.C. App. LEXIS 422 (1987).

§ 4-508. Disqualifications and reductions.

(a) The Court shall not award compensation if the:

(1) Claimant knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation; or

(2) Injury or death for which compensation is sought was caused by the victim's consent, substantial provocation, or substantial incitement.

(b) An application for assistance may be denied, in whole or in part, if the Court finds:

(1) Denial is appropriate due to the nature of the victim's or secondary victim's involvement in the events leading to the relevant crime; or

(2) The claimant failed to provide information to a requesting law enforcement agency or did not reasonably cooperate with law enforcement officials in apprehending the offender. Refusal of a victim or claimant to testify

against the offender may be excused if testifying would subject the victim or claimant to a substantial risk of serious physical or emotional injury.

(c) Notwithstanding subsections (a) and (b) of this section, if the victim is found to have willingly or knowingly participated, consented, provoked, or incited the crime, a secondary victim is not automatically precluded from compensation.

(d) Gang membership or co-habitation with the offender is not considered a disqualifying factor under subsections (a) or (b) of this section, unless the claimant will be substantially and unjustly enriched by the award.

(Apr. 9, 1997, D.C. Law 11-243, § 9, 44 DCR 1142; Oct. 23, 2010, D.C. Law 18-239, § 201(b), 57 DCR 5405.)

Prior Codifications. — 1981 Ed., § 3-428.

Effect of amendments. — D.C. Law 18-239, in subsec. (a)(1), substituted “claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation; or” for “claim; or”.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Legislative history of Law 18-239. — For history of Law 18-239, see notes under § 4-501.

CASE NOTES

ANALYSIS

Claimant's conduct.
In general.

Claimant's conduct.

Copy of complaint that elaborated upon victim's conduct during incident that led to his beating could not serve as basis for affirming agency's denial of benefits under District of Columbia Victims of Violent Crime Compensation Act absent any indication that complaint was part of evidence presented at administrative hearing. D.C. Code 1981, §§ 1-1509(c), 3-401 et seq. *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

Mere fact that victim initiated argument that escalated into physical confrontation did not establish that victim did not qualify as “innocent victim” under District of Columbia Victims of Violent Crime Compensation Act; ineligibility for compensation required finding that victim participated in unlawful activity or type of misconduct described in regulation implementing Act. D.C. Code 1981, §§ 3-401(7)(D), 3-402(b). *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

Victim injured in assault for which assailant was arrested and convicted had waived his opportunity for hearing at which he could have established that he was not precluded from receiving crime victims' compensation by regulation on theory he had consented to or prolonged confrontation, or participated in other illegal conduct, and had thus failed to exhaust his administrative remedies or present contested case for which judicial review was available pursuant to statute, where victim was advised of claims examiner's determination he was not entitled to compensation and of his right to request hearing within 15 days, but failed to request hearing. D.C. Code 1981, §§ 1-1510, 3-401 to 3-415. *Siler v. District of Columbia Dep't of Employment Services*, 525 A.2d 620, 1987 D.C. App. LEXIS 354 (1987).

In general.

Under plain language of District of Columbia Victims of Violent Crime Compensation Act and its reference to “innocent victim,” only those participating in or involved in unlawful or criminal activity are ineligible for compensation. D.C. Code 1981, §§ 3-401(7)(D), 3-402(b). *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

§ 4-509. Preservation of civil actions; subrogation.

(a) A claimant or the claimant's successors in interest retain the right to

recover damages from the offender or third parties, and the right to restitution from the offender.

(b) To the extent that the Court has made payment to or on behalf of the victim, restitution, if imposed by the Court, shall be paid to the Fund.

(c) The District of Columbia is subrogated to the claimant's right against the offender or third parties to the extent of any compensation awarded under this chapter. The District of Columbia may initiate a lawsuit against the offender for damages or restitution or against third parties for damages.

(d) The claimant shall notify the Corporation Counsel of the District of Columbia if a lawsuit for restitution or damages is instituted. The District of Columbia may intervene in the lawsuit and is privy to a lien on recovery made from the lawsuit. If the funds are retrieved through subrogation, they shall be credited to the Fund.

(e) Application forms for compensation by the Program shall include a repayment subrogation agreement.

(Apr. 9, 1997, D.C. Law 11-243, § 10, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-429.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-510. Emergency awards.

(a) If it appears likely that a final award will be made and that the claimant will suffer undue financial or emotional hardship if immediate financial assistance is not granted, an emergency award not exceeding \$1,000 may be made prior to the final determination.

(b) If compensation is awarded, the Court shall deduct the amount of the emergency award from the final award.

(c) If the emergency award is greater than the final award, the claimant shall repay the difference.

(d) If compensation is not awarded, the claimant shall repay the emergency award to the Fund.

(e) The District of Columbia may recover or institute a lien on outstanding funds. Any funds recovered shall be credited to the Fund.

(Apr. 9, 1997, D.C. Law 11-243, § 11, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-430.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-511. Confidentiality.

(a) Information, records, and transcripts of hearings contained in the claims files under the provisions of this chapter are confidential and not open to public inspection, except that:

(1) A claimant or the representative of a claimant, whether an individual or an organization, may review that person's claim or receive specific informa-

tion therefrom. Information shall be released to a claimant's representative only upon presentation of the signed authorization of the claimant.

(2) Physicians treating or examining claimants seeking benefits under this chapter or physicians giving medical advice to the Court regarding any claim, may, at the discretion of the Court, inspect the claims files and records of the claimant. Other persons may inspect a claimant's files and records only when rendering assistance to the Court on a matter pertaining to the administration of this chapter.

(b) The Court shall not include the name of any claimant in the annual report to the Council of the District of Columbia, unless authorized by the claimant.

(c) Each record or report obtained by the Court, the confidentiality of which is protected by any other law or regulation, remains confidential subject to that law or regulation.

(Apr. 9, 1997, D.C. Law 11-243, § 12, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-431.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-512. Procedures for filing claims.

(a) A claim shall be initiated when the claimant timely submits a completed application to the Court. Claims may be filed in person or by mail. A claim may be filed by a person eligible for compensation as provided in § 4-506, or if that person is a minor or legally incompetent, by the claimant's parent, guardian, or personal representative.

(b) Upon receipt of a completed application, the Court shall examine written information submitted by the claimant and other documentary evidence. The Court may require additional information from the claimant and conduct investigations as necessary to determine whether the claimant is eligible for compensation and the amount, if any, of compensation to be awarded. The Court shall send a notice of the determination, and the reasons therefor, to the claimant by first class mail, along with instructions for requesting reconsideration or an appeal before the Board.

(c) The claimant may, within 30 days after receiving the notice of determination, request reconsideration based on new or previously unavailable information. The Court must render a decision based on the additional information within 30 days after receiving the information. The Court may affirm, modify, or reverse its initial decision. The Court shall send a notice of the decision on reconsideration, and the reasons therefor, to the claimant by first class mail, along with instructions for filing an appeal.

(d) The claimant may, within 30 days after receipt of the initial determination, or within 30 days after receipt of the decision on reconsideration, appeal the decision to the Board. The Board shall consider the appeal on the record at its next scheduled meeting if the Board has received the appeal and the record at least 5 days before the meeting. Within 20 days after the meeting, the Board shall render its decision in the case or give notice to the claimant that it will

hold a hearing. The hearing shall occur within 30 days after the issuance of the notice. The Board shall render its decision in the case within 20 days after the hearing. The Court shall provide the claimant with written notice of the final determination of the claim. If the final determination was made pursuant to a hearing, the notice shall include findings of fact and conclusions of law.

(e) The claimant may agree in writing to a final determination at any time.

(f) The Court may reopen a claim at any time if new evidence reveals that the claimant was not eligible, was guilty of contributory misconduct, knowingly provided false information, or suppressed relevant information concerning a claim.

(g) The claimant may have an attorney or other representative present at any appeals proceeding. In addition to the amount of compensation awarded to a successful claimant, a reasonable fee may be awarded to the claimant's attorney for services rendered in connection with an appeals proceeding under this chapter. The fee may not exceed 10% of the claimant's award or \$500, whichever is less. Except for necessary costs, an attorney shall not charge, demand, receive, or collect a fee for services rendered in connection with a claim under this chapter in an amount larger than permitted by this section. The court shall notify the claimant of the availability of pro bono representation by clinical programs at area law schools.

(h) A final determination by the Board under this chapter may be appealed to the Chief Judge of the Court. Decisions of the Chief Judge shall be final.

(Apr. 9, 1997, D.C. Law 11-243, § 13, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-432.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

CASE NOTES

Evidence.

Copy of complaint that elaborated upon victim's conduct during incident that led to his beating could not serve as basis for affirming agency's denial of benefits under District of Columbia Victims of Violent Crime Compensation Act absent any indication that complaint was part of evidence presented at administrative hearing. D.C. Code 1981, §§ 1-1509(c), 3-401 et seq. *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

§ 4-513. False claims.

(a) It shall be a misdemeanor to knowingly submit false information or suppress relevant information concerning a claim under this chapter. Law enforcement authorities investigating possible false claims referred by the Court under this section have complete access to the claimant's files for the purpose of pursuing a false claim investigation.

(b) A person convicted of an offense under this section shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both. A person convicted of an offense under this section forfeits compensation under this chapter and shall repay to the District of Columbia all compensation received pursuant to this chapter. The United States Attorney's Office shall prosecute crimes under this section.

(Apr. 9, 1997, D.C. Law 11-243, § 14, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-433.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-514. Annual report.

The Chief Judge of the Court shall report annually to the Council of the District of Columbia on the status and activities of the Program. The report shall include, but not be limited to, the following information:

- (1) An explanation of the procedures for filing and processing claims;
- (2) A description of the programs and policies instituted to promote public awareness about crime victims compensation;
- (3) An analysis of future needs and suggested Program improvements;
- (4) A copy of the application forms utilized under this chapter; and
- (5) A complete statistical analysis of the cases handled, including the:
 - (A) Number of claims filed;
 - (B) Number of claims approved and the amount of each award;
 - (C) Number of claims denied and the reasons for rejection;
 - (D) Average length of time to process a claim;
 - (E) Number of contested cases reviewed by the Board and the disposition of those cases;
 - (F) Number of contested cases reviewed by the Chief Judge and the disposition of those cases;
 - (G) Number of cases in which a claimant was represented by an attorney or a law student;
 - (H) Cumulative total of attorneys' fees paid;
 - (I) Breakdown of claims by age, sex, and primary language of the victim, type of crime committed, and other relevant facts;
 - (J) Individual amounts of revenues attributable to assessments on misdemeanor and traffic offenses;
 - (K) Number of cases pending, and the future liability of the Fund; and
 - (L) Total amount of program expenditures for benefit payments, personnel, and other administrative costs.

(Apr. 9, 1997, D.C. Law 11-243, § 15, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-434.
Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-515. Crime Victims Compensation Fund.

(a) A fund is established to be administered by the Court and to be known as the Crime Victims Compensation Fund ("Fund") for the purpose of accounting for the financial operations of this chapter. The Fund shall be maintained as a separate fund in the Treasury of the United States. All amounts deposited to the credit of the Fund are appropriated without fiscal year limitation to make payments as authorized under subsection (e) of this section.

(b) [Repealed.]

(c) Monies in the Fund shall consist of all funds transferred from the Department of Human Services on April 9, 1997, any appropriations to the Fund under § 4-518, assessments imposed under § 4-516, monies recovered through subrogation or repayment under §§ 4-509, 4-510 and 4-513, costs assessed under the Victims of Violent Crime Compensation Act of 1981 that are collected after April 9, 1997, any other fines, fees, penalties, or assessments that the Court determines necessary to carry out the purposes of the Fund, and monies received from the federal government or other public or private sources for the purpose of the Fund.

(d) Any unobligated balance existing in the Fund as of the end of each fiscal year (beginning with fiscal year 2000) may be used only in accordance with a plan developed by the District of Columbia which is submitted to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate, except that under such plan:

(1) 50 percent of such balance shall be used for direct compensation payments to crime victims through the Fund under this section and in accordance with this chapter; and

(2) 50 percent of such balance shall be transferred from the Fund to the Crime Victims Assistance Fund established by § 4-515.01 and shall be used without fiscal year limitation for outreach activities designed to increase the number of crime victims who apply for such direct compensation payments.

(d-1)(1) In Fiscal Year 2001, the first \$200,000 of the unobligated balance shall be transferred to the Executive Office of the Mayor to fund staff support for the District of Columbia Commission on Violence Against Women.

(2) The remaining funds shall be made available for victims assistance in accordance with a plan developed by the Executive Office of the Mayor and submitted to the Council, excluding days of Council recess. If the Council does not disapprove the proposed plan in whole or in part, by resolution within this 30-day period, the plan shall be deemed approved.

(3) The Mayor shall submit an annual report to the Council which details the amount of funds transferred pursuant to this subsection, and all expenditures or disbursements of funds, no later than 90 days after the end of each fiscal year.

(4) For the purposes of this section “unobligated balance” does not include the amount of claims pending at the end of a fiscal year which have been filed but for which awards have not been made, based on an estimated average cost of each award.

(e) All compensation payments and attorneys’ fees awarded under this chapter shall be paid from, and subject to, the availability of monies in the Fund. Not more than 5 percent of the total amount of monies in the Fund may be used to pay administrative costs necessary to carry out this chapter.

(f) The Superior Court of the District of Columbia shall arrange for an annual independent audit of the Fund. The audit shall include:

(1) The number of claims satisfied in each fiscal year and the respective amounts awarded;

- (2) The number and status of all pending claims;
- (3) The unexpended balance in the Fund to be transferred to the victims assistance grants agency pursuant to subsection (d) of this section; and
- (4) The number of personnel positions and amount of personnel funding and other administrative costs of the Crime Victims Compensation Program.

(Apr. 9, 1997, D.C. Law 11-243, § 16, 44 DCR 1142; Nov. 29, 1999, 113 Stat. 1527, Pub. L. 106-113, § 160(a)-(d); Oct. 19, 2000, D.C. Law 13-172, § 202(d), 47 DCR 6308; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666, Div. A., Ch. 4, § 403(a); Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. (19)(a), (b); Aug. 2, 2002, 116 Stat. 846, Pub. L. 107-206, § 402; Oct. 1, 2002, D.C. Law 14-190, § 1302(a), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 3-435.

Effect of amendments. — Section 160(a) of Public Law 106-113 rewrote subsec. (e), which had read:

“All compensation and attorneys’ fees awarded under this chapter and administrative costs necessary to carry out this chapter shall be paid from, and subject to, the availability of monies in the Fund.”;

Section 160(b) of Public Law 106-113 rewrote subsec. (a) and repealed subsec. (d), which had read:

“(a) A fund is established to be administered by the Court and to be known as the Crime Victims Compensation Fund (‘Fund’) for the purpose of accounting for the financial operations of this chapter. Monies in the Fund shall not be commingled with the General Fund, nor shall the operation of the Fund impose a burden or charge on the general fund.”

“(d) The monies in the Fund are not part of, nor shall they lapse into, the General Fund of the District or any other fund of the District, except as provided in this chapter.”; section 160(c) of Public Law 106-113, in subsec. (c), added after “1997,” the second place it appears “any other fines, fees, penalties, or assessments that the Court determines necessary to carry out the purposes of the Fund,”; and section 160(d) of Public Law 106-113 added subsec. (d) to read:

“Any unobligated balance existing in the Fund in excess of \$250,000 as of the end of each fiscal year (beginning with fiscal year 2000) shall be transferred to miscellaneous receipts of the Treasury of the United States not later than 30 days after the end of the fiscal year.”

D.C. Law 13-172 repealed subsec. (b), added new subsec. (d-1), relating to the use of funds for Fiscal Year 2001, and rewrote subsec. (e), as amended by section 160(a) of Public Law 106-113, and subsec. (f), which had read:

“(e) All compensation and attorneys’ fees awarded under this chapter shall be paid from, and subject to, the availability of monies in the Fund, and no monies in the Fund may be used for any other purpose.

“(f) The Auditor of the District of Columbia shall perform an audit of the Crime Victims Compensation Program that operated pursuant to the Victims of Violent Crime Compensation Act of 1981, effective April 6, 1982 (D.C. Law 4-100; D.C. Code § 3-401 et seq.), within 30 days of April 9, 1997 and the transfer of the Program to the Court. The audit shall include the number of claims satisfied in calendar years 1994, 1995, and 1996 and the respective amounts awarded; the number and status of all pending claims; the remaining unexpended balance in the Fund to be transferred to the Court for payment to victims and for the administrative costs of the Program; and the number of personnel positions and amount of personnel funding to be transferred to the Court.”

Pub. L. 107-96 rewrote subsecs. (d) and (e), which had read:

“(d) Any unobligated balance existing in the Fund in excess of \$250,000 as of the end of each fiscal year (beginning with fiscal year 2000) may be used only in accordance with a plan developed by the District of Columbia and approved by the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate, and not less than 80 percent of such balance shall be used for direct compensation payments to crime victims through the Fund under this section and in accordance with this subchapter.”

“(e) All compensation and attorneys’ fees awarded under this chapter and administrative costs necessary to carry out this chapter shall be paid from, and subject to, the availability of monies in the Fund. All amounts which are required to be transferred to the victims assistance grants agency for the purpose of victims assistance pursuant to subsection (d) of this section shall be paid from monies in the Fund.”

D.C. Law 14-190, in subsec. (d)(2), substituted “to the Crime Victims Assistance Fund established by § 4515.01” for “to the executive branch of the District government.”

Pub. L. 107-206 rewrote subsec. (d)(2) which had read:

“(2) 50 percent of such balance shall be used for outreach activities designed to increase the number of crime victims who apply for such direct compensation payments.”

Emergency legislation. — See note to § 4-501.

For temporary (90-day) amendment of section, see § 202(d) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) addition of section, see § 842 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 202(d) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 1302(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) addition of § 4-515.01, see § 1302(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Legislative history of Law 13-172. — For D.C. Law 13-172, see notes following § 4-501.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.07.

Short title. — Short title of title XIII of Law 14-190: Section 1301 of D.C. Law 14-190 provided that title XIII of the act may be cited as the Victims of Violent Crime Compensation Amendment Act of 2002.

Effective date. — Section 403(b) of Chapter 4 of Division A of H.R. 5666, as enacted by reference by section 1(a)(4) of Pub. L. 106-554, stated that “The amendment made by subsection (a) shall take effect September 30, 2000.”

Pub. L. 107-96, par. (19)(c), 115 Stat. 928, the District of Columbia Appropriations Act, 2002, provided in part:

“The amendments made by this section shall take effect as if included in the enactment of section 403 of the Miscellaneous Appropriations Act, 2001 Pub. L. 106-554, § 1(a)(4), H.R. 5666, Div. A, Ch. 4, § 403.”

Editor’s notes. — Section 160(e) of Public Law 106-113 provided: “**RATIFICATION OF PAYMENTS AND DEPOSITS.**—Any payments made from or deposits made to the Crime Victims Compensation Fund on or after April 9, 1997 are hereby ratified, to the extent such payments and deposits are authorized under the Victims of Violent Crime Compensation Act of 1996 (D.C. Code, sec. 3-421 et seq.), as amended by this section.”

§ 4-515.01. Crime Victims Assistance Fund.

(a) There is established as a nonlapsing, interest-bearing, revolving fund the Crime Victims Assistance Fund into which shall be deposited the funds described in § 4-515(d)(2). The Crime Victims Assistance Fund shall be separate from the General Fund of the District of Columbia and administered by the Office of Victim Services.

(a-1) The Office of the Chief Financial Officer shall calculate the amount of interest earned by funds accounted for in the Crime Victims Assistance Fund for fiscal year 2003 through fiscal year 2007 and shall deposit that amount in the fund on or before October 1, 2007.

(b) All amounts deposited in the Crime Victims Assistance Fund shall be appropriated without fiscal year limitation to make payments as authorized by subsection (d) of this section pursuant to an act of Congress. All amounts deposited in the Crime Victims Assistance Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (d) of this section, subject to authorization by Congress in an appropriations act.

(c) Not more than 5% of the total amount of monies in the Crime Victims Assistance Fund in any given fiscal year may be used to pay administrative costs necessary to implement the requirements of this section in accordance with § 4-515(d)(2).

(d) The balance of the Crime Victims Assistance Fund shall be used for outreach activities designed to:

(1) Increase the number of crime victims who apply for direct compensation payments, including victims of sexual assault, domestic violence, or child abuse (abuse counseling, health and mental health services, child advocacy centers, emergency housing, emergency child care, transportation, hospital-based informational and referral services, and family support); and

(2) Improve the intake, assessment, screening, and investigation of reports of child abuse and neglect, and domestic violence.

(e) A plan for spending the funds deposited in the Crime Victims Assistance Fund shall be submitted to the Council for approval before funds are expended.

(Apr. 9, 1997, D.C. Law 11-243, § 16a, as added Oct. 1, 2002, D.C. Law 14-190, § 1302(b), 49 DCR 6968; Sept. 18, 2007, D.C. Law 17-20, § 3012, 54 DCR 7052.)

Effect of amendments. — D.C. Law 17-20, in subsec. (a), substituted “nonlapsing, interest-bearing” for “nonlapsing” and substituted “Office of Victim Services” for “Justice Grants Administration”; and added subsec. (a-1).

Temporary Enactment. — For temporary (225 day) addition, see § 2 of Victims of Domestic Violence Fund Establishment Temporary Act of 2005 (D.C. Law 16-13, July 22, 2005, law notification 52 DCR 7166).

Effect of amendments. — For temporary (225 day) addition, see § 2 of Victims of Domestic Violence Fund Establishment Temporary Act of 2006 (D.C. Law 16-114, June 8, 2006, law notification 53 DCR 5352).

For temporary (225 day) addition, see § 2 of My Sister's Place, Inc., Grant Authority Temporary Act of 2006 (D.C. Law 16-150, July 25, 2006, law notification 53 DCR 7509).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Victims of Domestic Violence Fund Establishment Emergency Act of 2005 (D.C. Act 16-71, April 25, 2005, 52 DCR 4575).

For temporary (90 day) addition, see § 2 of Victims of Domestic Violence Fund Establishment Emergency Act of 2006 (D.C. Act 16-307, March 2, 2006, 53 DCR 1924).

For temporary (90 day) addition, see § 2 of Victims of Domestic Violence Fund Establishment Congressional Review Emergency Act of 2006 (D.C. Act 16-375, May 19, 2006, 53 DCR 4390).

For temporary (90 day) amendment of section, see § 3012 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 4-204.07.

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 3011 of D.C. Law 17-20 provided that subtitle B of title III of the act may be cited as the “Crime Victims Assistance Fund and Shelter and Transitional Housing for Victims of Domestic Violence Fund Amendment Act of 2007”.

§ 4-516. Assessments.

(a) In addition to and separate from punishment imposed, an assessment of \$100 for each violation of § 50-2201.05, an assessment of between \$50 and \$250 for other serious traffic or misdemeanor offenses, and an assessment of between \$100 and \$5,000 for each felony offense shall be imposed upon each person convicted of or pleading guilty or nolo contendere to the offense in the Superior Court of the District of Columbia or any other court in which the offense is charged. The decision of the sentencing court regarding assessments is final. If an offender is indigent at the time of sentencing and is later

employed for salary, receives compensation while on probation or parole, or is incarcerated in a facility of the Department of Corrections or elsewhere and receives wages or compensation therein, the amount of assessments under this section shall be paid from such salary, wages, or other compensation.

(b) The probation office of the Court shall monitor collection of assessments levied against defendants released on probation. The Department of Corrections shall monitor collection of assessments levied against incarcerated defendants. The District of Columbia Board of Parole shall consider satisfaction of assessments under this section when determining release of inmates eligible for parole. If an inmate is released on parole prior to satisfaction of an assessment, the District of Columbia Board of Parole shall monitor collection of the balance due.

(c) Assessments under this chapter shall be collected as fines. Failure to pay assessments as ordered by the Court will subject a defendant so ordered to sanctions provided pursuant to § 16-706.

(Apr. 9, 1997, D.C. Law 11-243, § 17, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-436.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

CASE NOTES

In general.

Remand to assess fee under the Victims of Violent Crime Compensation Act of 1996 (VVCA) was required, even though defendant was a first time drug offender who was placed on probation without the entry of a judgment of guilty, where defendant pled guilty to possession of marijuana. *Gotay v. United States*, 805 A.2d 944, 2002 D.C. App. LEXIS 505 (2002).

Attorney's conviction of contempt was for criminal violation and warranted payment of \$10 fee to Crime Victims' Compensation Fund. D.C. Code 1981, § 3-414. *In re Marshall*, 549 A.2d 311, 1988 D.C. App. LEXIS 188 (1988).

§ 4-517. Duty of law enforcement agencies.

(a) All law enforcement agencies in the District of Columbia shall inform victims or secondary victims of the existence of the Program and provide application forms to victims and secondary victims.

(b) No law enforcement agency shall be civilly liable for a failure to comply with subsection (a) of this section.

(c) The Court shall provide application forms, other documents, and general information that law enforcement agencies may require to comply with this section.

(Apr. 9, 1997, D.C. Law 11-243, § 18, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-437.

Emergency legislation. — See note to § 4-501.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

§ 4-517.01. Crime victims assistance.

(a) The victims assistance grants agency shall have the authority to use the funds transferred pursuant to § 4-515 to award grants and contracts to private

nonprofit organizations and to transfer funds to government entities which provide assistance to crime victims.

(b) Repealed.

(Apr. 9, 1997, D.C. Law 11-243, § 18a, as added Oct. 19, 2000, D.C. Law 13-172, § 202(e), 47 DCR 6308; Dec. 7, 2004, D.C. Law 15-205, § 1192(f), 51 DCR 8441.)

Effect of amendments. — D.C. Law 15-205 repealed subsec. (b).

Emergency legislation. — For temporary (90-day) addition of section, see § 202(e) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1192(f) of Fiscal Year 2005 Budget

Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1192(f) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 4-204.61.

§ 4-518. Appropriations.

Funds may be appropriated as necessary to carry out this chapter.

(Apr. 9, 1997, D.C. Law 11-243, § 19, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-438.

Emergency legislation. — See note to § 4-501.

For temporary (90 day) addition of § 4-519, see § 202(e) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act

of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-501.

Subchapter I-A. Shelter and Transitional Housing.

§ 4-521. Shelter and Transitional Housing for Victims of Domestic Violence Fund.

(a) For the purposes of this section, the term:

(1) “Fund” means the Shelter and Transitional Housing for Victims of Domestic Violence Fund.

(2) “Operating expenses” means:

(A) Those costs incurred in providing counseling and case management to victims of domestic violence and their children; and

(B) Monthly rent, utilities, and building maintenance for the residential facilities in which victims of domestic violence and their children are housed.

(b) There is established as a nonlapsing, interest-bearing fund the Shelter and Transitional Housing for Victims of Domestic Violence Fund, which shall be administered by the Deputy Mayor for Public Safety and Justice and used for the purpose of awarding grants to organizations that provide services to victims of domestic violence in emergency shelters and transitional housing to reimburse them for their operating expenses.

(c) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a

fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(d) The Chief Financial Officer shall transfer \$3.7 million from the Crime Victims Assistance Fund to the Fund on or before October 1, 2007. Other funds may be deposited into the Fund from sources identified by District law.

(Sept. 18, 2007, D.C. Law 17-20, § 3013, 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 9048, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (b), substituted “Deputy Mayor for Public Safety and Justice” for “Office of Victim Services”.

Emergency legislation. — For temporary (90 day) addition, see § 3013 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and

assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Subchapter II. Repealed Provisions.

§ 4-531. Definitions. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 2, 29 DCR 969; Sept. 26, 1990, D.C. Law 8-164, § 2, 37 DCR 4824; May 16, 1995, D.C. Law 10-255, § 8, 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-401.

Emergency legislation. — For temporary repeal of §§ 4-531 through 4-545, see § 20 of the Victims of Violent Crime Compensation Emergency Act of 1996 (D.C. Act 11-447, December 5, 1996, 43 DCR 6669), and § 20 of the Victims of Violent Crime Compensation Congressional Review Emergency Act of 1997 (D.C. Act 12-34, March 11, 1997, 44 DCR 1915).

Legislative history of Law 11-243. — Law 11-243, the “Victims of Violent Crime Compen-

sation Act of 1996,” was introduced in Council and assigned Bill No. 11-657, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-503 and transmitted to both Houses of Congress for its review. D.C. Law 11-243 became effective on April 9, 1997.

§ 4-532. Eligibility. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 3, 29 DCR 969; Aug. 9, 1986, D.C. Law 6-136, § 2(a), 33 DCR 3796; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-402.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-533. Awards of compensation. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 4, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-403.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-534. Emergency awards. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 5, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-404.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-535. Attorneys fees. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 6, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-405.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-536. Preservation of civil actions; subrogation. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 7, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-406.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-537. Waiver of rights void; award exempt from execution or attachment. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 8, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-407.
Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-538. False claims. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 9, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-408.
Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-539. Administration; annual report to Council. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 10, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-409.
Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-540. Duties and powers of Mayor. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 11, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-410.
Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-541. Procedure. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 12, 29 DCR 969; Aug. 9, 1986, D.C. Law 6-136, § 2(b), 33 DCR 3796; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-411.
Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-542. Judicial review. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 13, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-412.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-543. Crime Victims' Compensation Fund. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 14, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-413.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-544. Costs. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 15, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Cross references. — Prisons and prisoners, employed prisoners, disbursement of wages to, see § 24-231.11.

Prior Codifications. — 1981 Ed., § 3-414.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

§ 4-545. Appropriations. [Repealed].

Repealed.

(Apr. 6, 1982, D.C. Law 4-100, § 16, 29 DCR 969; Apr. 9, 1997, D.C. Law 11-243, § 20, 44 DCR 1142.)

Prior Codifications. — 1981 Ed., § 3-415.

Emergency legislation. — See note to § 4-531.

Legislative history of Law 11-243. — For legislative history of D.C. Law 11-243, see Historical and Statutory Notes following § 4-531.

CHAPTER 6. HEALTH-CARE ASSISTANCE REIMBURSEMENT.

Sec.

4-601. Definitions.

4-602. Right to reimbursement established;
subrogation and assignment.

4-603. Set-off.

4-604. Enforcement of right; waiver.

4-605. Settlement probative of liability.

Sec.

4-606. Notice.

4-607. Lien.

4-608. Rules.

4-609. Existing rights to reimbursement pre-
served.

§ 4-601. Definitions.

For the purposes of this chapter, the term:

(1) "Beneficiary" means any individual who has received health-care assistance from the District and, if applicable, that individual's guardian, conservator, personal representative, estate, dependents, and survivors.

(2) "District" means the District of Columbia.

(3) "Health-care assistance" means health or health-related care and treatment that the District has undertaken to provide or pay for free of charge or at a discounted rate, and includes future care and treatment that the Mayor, in his or her discretion, reasonably anticipates will be provided or paid for by the District. The term "health-care assistance" includes, but shall not be limited to, medical, surgical, nursing, dental, hospital, nursing home, hospice, and home care, prostheses and medical appliances, physical and occupational therapy, counseling and psychotherapy, social work, related transportation costs, and funeral and burial expenses.

(4) "Third party" means a third-party tortfeasor, beneficiary's insurer, or any other individual, organization, or entity that is or may be liable to a beneficiary, in tort or contract, for all or part of the care and treatment the District has undertaken to provide or pay for as health-care assistance.

(June 14, 1984, D.C. Law 5-86, § 2, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-501.

Legislative history of Law 5-86. — Law 5-86, the "Health-Care Assistance Reimbursement Act of 1984," was introduced in Council and assigned Bill No. 5-271, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

March 27, 1984, and April 10, 1984, respectively. Signed by the Mayor on April 26, 1984, it was assigned Act No. 5-124 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority under D.C. Law 5-86, see Mayor's Order 85-56, May 17, 1985.

§ 4-602. Right to reimbursement established; subrogation and assignment.

(a) Whenever the District provides health-care assistance to a beneficiary who has suffered an injury or illness under circumstances creating liability in a third party or under circumstances that would have created such a liability had the beneficiary instead of the District incurred the expense of the health-care assistance, it shall have an independent, direct cause of action against that third party for the unreimbursed value or cost of the health-care assistance provided.

(b) As soon as the District begins providing health-care assistance to a

beneficiary, it shall become subrogated to any right or claim that the beneficiary has against a third party for the care and treatment it has undertaken to provide or pay for as health-care assistance. Alternatively, or in addition to the legal subrogation effected under this subsection, the Mayor may require a beneficiary to execute a written assignment of that same right or claim.

(June 14, 1984, D.C. Law 5-86, § 3, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-502.
Legislative history of Law 5-86. — For

legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

CASE NOTES

Payment and recovery.

District of Columbia, to the extent of its rights to legal subrogation under the Health-Care Assistance Reimbursement Act of 1984 (HCARA) and the Medical Care Recovery Act of 1978 (MCRA), could bring claims against gun manufacturers and distributors to recover nonreimbursed medical expenses incurred by District for treatment of people injured from being shot by third parties. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

District did not abuse its discretion by refusing to waive its Health-Care Assistance Reimbursement Act claim for full recovery of Medicaid payments it made for beneficiary's acquired immunodeficiency syndrome (AIDS)-related medical expenses to be recovered from beneficiary's estate which settled wrongful death and survival action; survivors did not incur "undue hardship" by virtue of District's full recovery of its lien since total recovery available to survivors and their attorneys was six times of amount of District's lien. D.C. Code 1981, § 3-504(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

District, which asserted Health-Care Assis-

tance Reimbursement Act claim against beneficiary's estate which settled wrongful death and survival action for full recovery of Medicaid payments it made to beneficiary, did not abuse its discretion by declining to contribute to estate's attorney fees and costs incurred in litigation; litigation was instigated without participation of District and apparent purpose was not to recover health care expenses paid by district but rather to seek monetary recovery of several million dollars for benefit of beneficiary's survivors. D.C. Code 1981, § 3-507(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

Beneficiary's estate was required to fully reimburse District of Columbia for Medicaid payments it made to beneficiary for her acquired immunodeficiency syndrome (AIDS)-related medical expenses after estate received settlement in wrongful death and survival action, despite fact that estate settled claim for less than alleged damage value of case. D.C. Code 1981, § 3-507(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

Under this chapter, the District's lien must be satisfied before the beneficiary of free medical services may receive any proceeds from a judgment. *Holly v. Godette*, 121 WLR 1409 (Super. Ct. 1993).

§ 4-603. Set-off.

(a) Except as provided in subsection (b) of this section, whenever the District is a defendant in a proceeding brought by a beneficiary, it shall have a right to set off from a judgment against it any damages that represent compensation for the care and treatment it has undertaken to provide or pay for as health-care assistance.

(b) No set-off shall be allowed from a judgment entered against the District pursuant to any provision of Chapter 13 of Title 7.

(June 14, 1984, D.C. Law 5-86, § 4, 31 DCR 2098.)

Cross references. — Mentally retarded persons, action to compel rights, initiation, see § 7-1305.13.

Mentally retarded persons, commitment and maintenance of substantially retarded persons, liability of estate of public patient for maintenance, see § 21-1110.

Mentally retarded persons, deprivation of civil rights, see § 7-1305.14.

Prior Codifications. — 1981 Ed., § 3-503.

Legislative history of Law 5-86. — For legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

§ 4-604. Enforcement of right; waiver.

(a) In enforcing its right to reimbursement, the District may:

(1) Permit the beneficiary to proceed on behalf of the District in prosecuting, in conjunction with his or her own claims, the District's claim for the unreimbursed value or cost of the health-care assistance provided;

(2) Intervene or join in any proceeding brought by the beneficiary;

(3) Institute and prosecute a proceeding either alone (in its own or the beneficiary's name) or in conjunction with the beneficiary; or

(4) Compromise or settle and execute a release of its claim against a third party.

(b) The Mayor may waive, in whole or in part, enforcement of the District's claim against a third party if enforcement in a particular case would not be cost effective or would result in undue hardship to the beneficiary, including any dependents or survivors of the actual recipient of health-care assistance. If waiver is based on the avoidance of undue hardship, the Mayor may in addition void the legal subrogation or assignment effected pursuant to § 4-602(b). In determining whether, and to what extent, reimbursement should be sought or awarded under this chapter, the Mayor or a court, respectively, shall give due consideration to the extent of the beneficiary's injuries and his or her current and future needs, including the current and future needs of any dependents or survivors of the actual recipient of health-care assistance.

(c) No proceeding prosecuted or judgment received by the District pursuant to this chapter shall be a bar to a beneficiary's claim or cause of action for elements of damage not covered by the District's cause of action, or shall operate to deny the beneficiary recovery of those elements of damage.

(June 14, 1984, D.C. Law 5-86, § 5, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-504.

Legislative history of Law 5-86. — For

legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

CASE NOTES

Payment and recovery.

District did not abuse its discretion by refusing to waive its Health-Care Assistance Reimbursement Act claim for full recovery of Medicaid payments it made for beneficiary's acquired immunodeficiency syndrome (AIDS)-related medical expenses to be recovered from beneficiary's estate which settled wrongful death and

survival action; survivors did not incur "undue hardship" by virtue of District's full recovery of its lien since total recovery available to survivors and their attorneys was six times of amount of District's lien. D.C. Code 1981, § 3-504(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

§ 4-605. Settlement probative of liability.

Any settlement or compromise of a claim or cause of action between a beneficiary and third party for more than what in the opinion of the court is a nominal amount in light of the claims asserted shall be admissible in evidence as probative of that third party's liability to the District.

(June 14, 1984, D.C. Law 5-86, § 6, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-505. legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.
Legislative history of Law 5-86. — For

§ 4-606. Notice.

(a) Any individual or institutional health-care provider that bills the District for health-care assistance furnished to a beneficiary shall provide the Mayor with written notice of any known or suspected third-party liability as soon as the health-care provider acquires knowledge of or suspects the existence of that liability. The written notice shall include the beneficiary's name and, if known, the name of the third party and a description of the circumstances allegedly creating a liability.

(b) If either the beneficiary or the Mayor separately institutes a proceeding against or settlement negotiations with a third party, the party instituting the proceeding or negotiations shall have 20 calendar days to give the other party written notice of the action by personal service or certified mail. If a court proceeding has been instituted, proof of timely notice shall be filed with the court. Whenever the Mayor separately institutes a proceeding under this chapter, written notice to the beneficiary shall advise him or her of the Mayor's right to reimbursement and, if the beneficiary has not proceeded to trial in another proceeding or executed a settlement agreement, his or her rights to intervene or join in the proceeding and to retain private counsel.

(c) After deducting a beneficiary's litigation costs and reasonable attorney's fees, a third party who is aware that the District might have a claim against the remainder of a judgment or settlement awarded or executed in favor of the beneficiary shall not satisfy the remainder of that judgment or settlement without first giving the Mayor both written notice of the judgment or settlement and 30 calendar days from the date notice is received to determine the appropriateness of a lien under § 4-607, and, if appropriate, to perfect and satisfy that lien.

(d) If a beneficiary retains private counsel, counsel shall be responsible for giving all notices required by this section.

(June 14, 1984, D.C. Law 5-86, § 7, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-506. legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.
Legislative history of Law 5-86. — For

§ 4-607. Lien.

(a) Except as limited by subsections (b) and (c) of this section, the District

shall have a lien, perfected in accordance with subsection (d) of this section, upon any judgment or settlement awarded or executed in favor of a beneficiary against a third party for that amount of the judgment or settlement that represents the care and treatment it has undertaken to provide or pay for as health-care assistance.

(b) If the beneficiary prosecutes a claim on behalf of the District in a proceeding or settlement negotiations and incurs a personal liability for litigation costs and attorney's fees, the Mayor shall determine in good faith what, if any, contribution to those costs and fees would be appropriate, and that contribution shall be subtracted from the amount of the lien.

(c) The beneficiary shall have the right to retain the amount of judgment or settlement that remains after the deduction of litigation costs, reasonable attorney's fees, or any amount necessary to reimburse the District for medical assistance payments the District has made on behalf of the beneficiary or the United States to the extent of the United States' financial participation in the medical assistance.

(d) To perfect a lien under this section, the Mayor, before payment of any part of a judgment or settlement is made to the beneficiary, shall:

(1) File in the Office of the Recorder of Deeds, in a docket provided for this type of lien, a written notice containing the beneficiary's name and address, the approximate date and location of the incident that caused or allegedly caused the beneficiary's injury or illness, and the name of the third party; and

(2) Provide by personal service or certified mail copies of the written notice of lien together with a statement of the date of filing to the beneficiary, the third party, and, if applicable and ascertained by the Mayor, the insurer of a third-party tortfeasor.

(e) If after receiving a notice of lien under paragraph (2) of subsection (d) of this section, a beneficiary, third party, or an insurer of a third-party tortfeasor disposes of funds covered by a lien perfected under this section without paying the District the amount of its lien that could have been satisfied from those funds after paying off any prior liens, that beneficiary, third party, or insurer shall, for a period of 1 year from the date the funds were improperly disposed of, be liable to the District for any amount that, because of the disposition, it is unable to recover.

(June 14, 1984, D.C. Law 5-86, § 8, 31 DCR 2098; Mar. 24, 1990, D.C. Law 8-99, § 2, 37 DCR 1067.)

Prior Codifications. — 1981 Ed., § 3-507.

Legislative history of Law 5-86. — For legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

Legislative history of Law 8-99. — Law 8-99, the "Health-Care Assistance Reimbursement Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-305, which

was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 2, 1990, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-152 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Costs and attorney fees.
Payment and recovery.

Costs and attorney fees.

The language of this act, its legislative history, and the treatment of the issue by courts in other jurisdictions lends credence to the conclusion that a beneficiary's litigation costs and attorney's fees have priority over any Medicaid lien asserted by the District. *Holly v. Godette*, 121 WLR 1409 (Super. Ct. 1993).

Litigation costs and attorney's fees must be subtracted before either the District or the plaintiff/beneficiary may receive proceeds from the judgment, but the District's lien is given priority over the plaintiff/beneficiary's personal claim. *Holly v. Godette*, 121 WLR 1409 (Super. Ct. 1993).

Payment and recovery.

District, which asserted Health-Care Assistance Reimbursement Act claim against bene-

ficiary's estate which settled wrongful death and survival action for full recovery of Medicaid payments it made to beneficiary, did not abuse its discretion by declining to contribute to estate's attorney fees and costs incurred in litigation; litigation was instigated without participation of District and apparent purpose was not to recover health care expenses paid by district but rather to seek monetary recovery of several million dollars for benefit of beneficiary's survivors. D.C. Code 1981, § 3-507(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

Beneficiary's estate was required to fully reimburse District of Columbia for Medicaid payments it made to beneficiary for her acquired immunodeficiency syndrome (AIDS)-related medical expenses after estate received settlement in wrongful death and survival action, despite fact that estate settled claim for less than alleged damage value of case. D.C. Code 1981, § 3-507(b). *Walker v. District of Columbia*, 682 A.2d 639, 1996 D.C. App. LEXIS 177 (1996).

§ 4-608. Rules.

The Mayor may, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to effectuate the purposes of this chapter, including, but not limited to, rules for:

- (1) Determining the unreimbursed value of health or health-related care and treatment that the District undertakes to provide directly;
- (2) Determining the appropriateness and amount of a District contribution under § 4-607(b);
- (3) Establishing procedures to implement the notice requirements in § 4-606; and
- (4) Facilitating the District's compliance with applicable federal regulations.

(June 14, 1984, D.C. Law 5-86, § 9, 31 DCR 2098.)

Prior Codifications. — 1981 Ed., § 3-508.

Legislative history of Law 5-86. — For

legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

§ 4-609. Existing rights to reimbursement preserved.

This chapter shall not be construed to limit or repeal any other provision of law that invests the District with a right to reimbursement for health-care assistance provided to a beneficiary or specified class of beneficiary.

(June 14, 1984, D.C. Law 5-86, § 10, 31 DCR 2098.)

Cross references. — Disability compensation, medical services and initial medical and

other benefits, furnishing to District government employees, see § 1-623.03.

Disability compensation, recovery from third persons, adjustment after recovery, see § 1-623.32.

Police and firefighters medical care recovery, see § 5-601 et seq.

Prior Codifications. — 1981 Ed., § 3-509.

Legislative history of Law 5-86. — For legislative history of D.C. Law 5-86, see Historical and Statutory Notes following § 4-601.

CHAPTER 6A. HEALTHY DC PROGRAM.

Sec.

4-631. Definitions.

4-632. Establishment of Healthy DC Program; administration.

4-633. Program eligibility.

4-634. Program benefits; affordability.

Sec.

4-635. Program implementation.

4-636. Prohibitions.

4-637. Disposition of fines and penalties.

4-638. Rules.

§ 4-631. Definitions.

For the purposes of this chapter, the term “health insurer” means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance, Securities, and Banking.

(Aug. 16, 2008, D.C. Law 17-219, § 5041, 55 DCR 7598.)

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned

Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 5040 of D.C. Law 17-219 provided that subtitle R of title V of the act may be cited as the “Healthy DC Act of 2008”.

§ 4-632. Establishment of Healthy DC Program; administration.

(a) There is established the Healthy DC Program (“Program”), which shall provide affordable health benefits to eligible individuals.

(b) The Program shall be administered by the Department of Health Care Finance, established by Chapter 7D of Title 7.

(c) The Program shall be funded through the Healthy DC and Health Care Expansion Fund, established by § 31-3514.02.

(d)(1) The Program shall be subject to the availability of funding.

(2) Nothing in this chapter shall be construed to create or constitute an entitlement to health insurance or health or medical benefits.

(Aug. 16, 2008, D.C. Law 17-219, § 5042, 55 DCR 7598; Sept. 24, 2010, D.C. Law 18-223, § 5025(a), 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-223, in subsec. (c), substituted “Healthy DC and Health Care Expansion Fund” for “Healthy DC Fund”.

Temporary Amendment of Section. — Section 5(a) of D.C. Law 18-205, in subsec. (c), substituted “Healthy DC and Health Care Expansion Fund” for “Healthy DC Fund”.

Section 7(b) of D.C. Law 18-205 provided that

the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 18-270, in subsec. (a), substituted “health benefits or premium subsidies for employer-sponsored coverage” for “health benefits”.

Section 4(b) of D.C. Law 18-270 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5(a) of Medicaid Resource Maximization Emergency Amendment Act of 2010 (D.C. Act 18-390, May 7, 2010, 57 DCR 4339).

For temporary (90 day) amendment of section, see § 2(a) of Healthy DC Emergency Amendment Act of 2010 (D.C. Act 18-528, August 3, 2010, 57 DCR 8095).

For temporary (90 day) amendment of section, see § 5025(a) of Fiscal Year 2011 Budget

Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(a) of Healthy DC Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-569, October 19, 2010, 57 DCR 10082).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 4-261.21.

§ 4-633. Program eligibility.

(a) An individual shall be eligible for the Program if the individual:

(1) Has resided in the District for at least 6 months at the time of application to the Program;

(2) Resides in a household having a gross household income not exceeding 400% of the federal poverty guidelines as updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2); and

(3) Does not qualify for:

(A) The DC HealthCare Alliance;

(B) Medicare;

(C) Medicaid; or

(D) Other federal health-benefits programs; and

(4)(A) Has not had health insurance during the 6-month period prior to application to the Program;

(B) Has had health insurance during the 6-month period prior to application to the Program but the insurance was terminated due to:

(i) The loss of employment;

(ii) A death of a spouse, domestic partner, or family member who maintained the individual as a beneficiary on a health-insurance plan;

(iii) Changes in student status, including graduation, a leave of absence, or reduction to part-time study;

(iv) A change of employment to a new employer who does not provide group health insurance;

(v) A legal annulment, separation, divorce, or the dissolution of a domestic partnership;

(vi) The loss of financial eligibility under Medicaid or the DC HealthCare Alliance;

(vii) The cancellation or discontinuation of a group health insurance contract by a health insurer; or

(viii) Any other reason as determined by the Mayor; or

(C) Has health insurance but the annual cost to the individual is deemed unaffordable, as determined by the Mayor.

(b) Eligibility for the Program shall not be subject to any pre-existing condition exclusions.

(Aug. 16, 2008, D.C. Law 17-219, § 5043, 55 DCR 7598; Feb. 4, 2010, D.C. Law 18-104, § 3(a), 56 DCR 9182.)

Effect of amendments. — D.C. Law 18-104, in subsec. (a)(2), substituted “not exceeding” for “between 200% and”; and, in subsec. (a)(4)(C), deleted “employer-based” following “Has” and deleted “premium” following “annual”.

Temporary Amendment of Section. — Section 3(a) of D.C. Law 18-134, in subsec. (a)(2), substituted “not exceeding” for “between 200% and”; and, in subsec. (a)(4)(C), deleted “employer based” and “premium”.

Section 6(b) of D.C. Law 18-134 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 18-270 added subsec. (c) to read as follows:

“(c) Regarding premium subsidies for employer-sponsored coverage:

“(1) To be eligible for premium subsidies for employer-sponsored coverage, an individual shall meet the criteria set forth in subsection (a) of this section and be offered qualified employer-sponsored coverage as defined by the Department of Health Care Finance.

“(2) Subsection (a)(4) of this section shall not apply to family members of an eligible individual for the purpose of receiving premium subsidies for family coverage.”.

Section 4(b) of D.C. Law 18-270 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of Hospital and Medical Services Corporation Regulatory Emergency Amendment Act of 2009 (D.C. Act 18-277, January 11, 2010, 57 DCR 935).

For temporary (90 day) amendment of section, see § 2(b) of Healthy DC Emergency Amendment Act of 2010 (D.C. Act 18-528, August 3, 2010, 57 DCR 8095).

For temporary (90 day) amendment of section, see § 2(c) of Healthy DC Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-569, October 19, 2010, 57 DCR 10082).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

Legislative history of Law 18-104. — Law 18-104, the “Hospital and Medical Services Corporation Regulatory Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-401, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on first and second readings on October 6, 2009, and November 3, 2009, respectively. Signed by the Mayor on November 30, 2009, it was assigned Act No. 18-239 and transmitted to both Houses of Congress for its review. D.C. Law 18-104 became effective on February 4, 2010.

§ 4-634. Program benefits; affordability.

(a) The Program shall provide, at a minimum, health and medical benefits that are equal to those provided to individuals enrolled in the DC HealthCare Alliance.

(b) The Program shall limit annual premium costs for program participants as follows:

(1) For a program participant with a gross household income of 300% of the federal poverty guidelines or less, the annual premium shall not exceed 3% of the participant’s gross household income; and

(2) For a program participant with a gross household income that exceeds 300% of the federal poverty guidelines, the annual premium shall not exceed 5% of the participant’s gross household income.

(Aug. 16, 2008, D.C. Law 17-219, § 5044, 55 DCR 7598; Feb. 4, 2010, D.C. Law 18-104, § 3(b), 56 DCR 9182.)

Effect of amendments. — D.C. Law 18-104 rewrote subsec. (b), which had read as follows: “(b) The Program shall limit annual premium costs to 3% or less of a Program participant’s gross income.”

Temporary Amendment of Section. — Section 201(a) of D.C. Law 17-326, in subsec. (a), substituted “October 1, 2009” for “July 1, 2009”.

Section 402(b) of D.C. Law 17-326 provided that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 18-134 amended subsec. (b) to read as follows:

“(b) The Program shall limit annual premium costs for program participants as follows:

“(1) For a program participant with a gross household income of 300% of the federal pov-

erty guidelines or less, the annual premium shall not exceed 3% of the participant's gross household income; and

"(2) For a program participant with a gross household income that exceeds 300% of the federal poverty guidelines, the annual premium shall not exceed 5% of the participant's gross household income."

Section 6(b) of D.C. Law 18-134 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 18-270 rewrote subsec. (a) and added subsec. (c) to read as follows:

"(a) The Program shall provide health and medical benefits comparable to the DC Employee Health Benefits Program."

"(c) Subsection (b) shall not apply to program participants receiving premium subsidies."

Section 4(b) of D.C. Law 18-270 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(b) of Hospital and Medical Services Corporation Regulatory Emergency Amendment Act of 2009 (D.C. Act 18-277, January 11, 2010, 57 DCR 935).

For temporary (90 day) amendment of section, see § 2(c) of Healthy DC Emergency Amendment Act of 2010 (D.C. Act 18-528, August 3,

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

Legislative history of Law 18-104. — For Law 18-104, see notes following § 4-633.

§ 4-635. Program implementation.

(a) The Mayor shall make the Program available to eligible individuals by January 1, 2010.

(b) To meet the deadline set forth in subsection (a) of this section, the Mayor is authorized to enter into a contract with one or more health insurers to administer the Program.

(c) Any contract entered into pursuant to this section shall require annual reporting of clinical-quality measurements and utilization data to the Mayor.

(Aug. 16, 2008, D.C. Law 17-219, § 5045, 55 DCR 7598; Feb. 4, 2010, D.C. Law 18-104, § 3(c), 56 DCR 9182.)

Effect of amendments. — D.C. Law 18-104, in subsec. (a), substituted "January 1, 2010" for "July 1, 2009".

Temporary Amendment of Section. — Section 3(c) of D.C. Law 18-134, in subsec. (a), substituted "January 1, 2010" for "July 1, 2009".

Section 6(b) of D.C. Law 18-134 provided that the act shall expire after 225 days of its having taken effect.

Section 2(d) of D.C. Law 18-270 added subsec. (d) to read as follows: "(d) The Mayor is authorized to provide premium subsidies to qualified eligible individuals."

Section 4(b) of D.C. Law 18-270 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 201(b) of Fiscal Year 2009 Balanced Budget Support Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-572, December 2, 2008, 55 DCR 12452).

For temporary (90 day) addition, see § 201(b)

of Fiscal Year 2009 Balanced Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-13, February 23, 2009, 56 DCR 1920).

For temporary (90 day) amendment of section, see § 3(c) of Hospital and Medical Services Corporation Regulatory Emergency Amendment Act of 2009 (D.C. Act 18-277, January 11, 2010, 57 DCR 935).

For temporary (90 day) amendment of section, see § 2(d) of Healthy DC Emergency Amendment Act of 2010 (D.C. Act 18-528, August 3, 2010, 57 DCR 8095).

For temporary (90 day) amendment of section, see § 2(d) of Healthy DC Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-569, October 19, 2010, 57 DCR 10082).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

Legislative history of Law 18-104. — For Law 18-104, see notes following § 4-633.

§ 4-636. Prohibitions.

It shall be unlawful for a health insurer to eliminate or restrict the

availability of a health insurance plan offered in the District with the intent of shifting beneficiaries to the Program. An entity found to be in violation of this section shall be subject to a fine of not less than \$10,000.

(Aug. 16, 2008, D.C. Law 17-219, § 5046, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

§ 4-637. Disposition of fines and penalties.

Fines and penalties collected pursuant to this chapter shall be deposited in the Healthy DC and Health Care Expansion Fund, established by § 31-3514.02.

(Aug. 16, 2008, D.C. Law 17-219, § 5047, 55 DCR 7598; Sept. 24, 2010, D.C. Law 18-223, § 5025(b), 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-223 substituted “Healthy DC and Health Care Expansion Fund” for “Healthy DC Fund”.

Temporary Amendment of Section. — Section 5(b) of D.C. Law 18-205 substituted “Healthy DC and Health Care Expansion Fund” for “Healthy DC Fund”.

Section 7(b) of D.C. Law 18-205 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5(b) of

Medicaid Resource Maximization Emergency Amendment Act of 2010 (D.C. Act 18-390, May 7, 2010, 57 DCR 4339).

For temporary (90 day) amendment of section, see § 5025(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 4-261.21.

§ 4-638. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Aug. 16, 2008, D.C. Law 17-219, § 5048, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-631.

CHAPTER 7. RIGHT TO OVERNIGHT SHELTER. [REPEALED].

Subchapter I. General Provisions

Subchapter II. Frigid Temperature Protection

Sec.

4-701 to 4-714. [Repealed].

Sec.

4-731, 4-732. [Repealed].

Subchapter I. General Provisions.

§ 4-701. Statement of policy. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 2, 31 DCR 6088; Mar. 6, 1991, D.C. Law 8-197, § 2(a), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-601.

Legislative history of Law 5-146. — Law 5-146, the “District of Columbia Right to Overnight Shelter Act of 1984,” was submitted to the electors of the District of Columbia on November 6, 1984, as Initiative No. 17. The results of the voting, certified by the Board of Elections and Ethics on November 20, 1984, were 114,698 for the Initiative and 43,966 against the Initiative. It was transmitted to Congress on January 8, 1985, published in the D.C. Register on December 7, 1984, and became law on March 14, 1985.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — Law 16-35, the “Homeless Services Reform Act of 2005,” was introduced in Council and assigned Bill No. 16-103 which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on June 7, 2005, and July 6, 2005, respectively. Signed by the Mayor on August 3, 2005, it was assigned Act No. 16-169 and transmitted to both Houses of Congress for its review. D.C. Law 16-35 became effective on October 22, 2005.

Delegation of Authority. — Delegation of authority under Law 5-146, see Mayor’s Order 85-53, May 9, 1985.

Delegation of authority pursuant to Law 5-146 to the Director, Department of Human Services, see Mayor’s Order 87-71, March 18, 1987.

Delegation of authority pursuant to D.C. Law 8-197, the “D.C. Emergency Overnight Shelter Amendment Act of 1990,” see Mayor’s Order 91-71, May 8, 1991.

Mayor’s Orders. — Declaration of an Emergency With Respect to the Urgent Need to Provide Permanent Housing for the Homeless in the District of Columbia: See Mayor’s Order 89-204, September 8, 1989.

§ 4-702. Declaration of policy. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-197, § 2(b), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-602.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-702.01. Emergency Shelter and Support Services Program established. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 3a, as added Mar. 6, 1991, D.C. Law 8-197, § 2(c), 37 DCR 4815; Apr. 9, 1997, D.C. Law 11-192, § 2, 43 DCR 4285; Mar. 20, 1998, D.C. Law 12-60, § 702, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 6, 46 DCR 905; Dec. 18, 2001, D.C. Law 14-56, § 116(c), 48 DCR 7674; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-602.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Emergency Assistance Clarification Temporary Amendment Act of 1995 (D.C. Law 11-24, July 14, 1995, law notification 42 DCR 3830).

For temporary (225 day) amendment of section, see § 3 of General Public Assistance Program Termination Temporary Amendment Act of 1997 (D.C. Law 12-21, September 23, 1997, law notification 44 DCR 5760).

For temporary (225 day) amendment of section, see § 702 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 6 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 16(c) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary amendment of section, see § 2 of the Emergency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839), § 2 of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019), § 2 of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-425, October 28, 1996, 43 DCR 6141), § 2 of the Emergency Assistance Clarification Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-485, January 2, 1997, 44 DCR 630), and § 2 of the Emergency Assistance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-42, March 31, 1997, 44 DCR 2091).

For temporary amendment of section, see § 3 of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 702 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196) and § 702

of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 6 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 6 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 6 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 6 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90 day) amendment of section, see § 16(c) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(c) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(c) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 8-197. — Law 8-197, the "District of Columbia Emergency Overnight Shelter Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-156, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-228 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-192. — Law 11-192, the "Emergency Assistance Clarification Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-188, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-348 and transmitted to both Houses of Congress for its re-

view. D.C. Law 11-192 became effective on April 9, 1996.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council

and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 4-204.08.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Editor’s notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 4-703. Definitions. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 4, 31 DCR 6088; Mar. 6, 1991, D.C. Law 8-197, § 2(d), 37 DCR 4815; Mar. 13, 2004, D.C. Law 15-105, § 98, 51 DCR 881; Oct. 22 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-603.

Legislative history of Law 5-146. — For legislative history of D.C. Law 5-146, see Historical and Statutory Notes following § 4-701.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see His-

torical and Statutory Notes following § 4-702.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-704. Assessment of homelessness. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 5, 31 DCR 6088; Mar. 6, 1991, D.C. Law 8-197, § 2(e), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-604.

Legislative history of Law 5-146. — For legislative history of D.C. Law 5-146, see Historical and Statutory Notes following § 4-701.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Delegation of Authority. — Director, Department of Human Services.—See Mayor’s Order 88-65, March 21, 1988.

§ 4-705. Provision of overnight shelter. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 6, 31 DCR 6088; Mar. 6, 1991, D.C. Law 8-197, § 2(f), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-605.

Legislative history of Law 5-146. — For legislative history of D.C. Law 5-146, see Historical and Statutory Notes following § 4-701.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Delegation of Authority. — Director, Department of Human Services.—See Mayor's Order 88-65, March 21, 1988.

§ 4-705.01. Participation in cost of emergency overnight shelter. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 6a, as added Mar. 6, 1991, D.C. Law 8-197, § 2(g), 37 DCR 4815; Sept. 26, 1995, D.C. Law 11-52, § 504, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 10, 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 8, 45 DCR 745; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-605.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 3 of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 3 of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 504 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the

Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Editor's notes. — "Be" was inserted in the third sentence of (a) to correct an error in D.C. Law 8-197.

§ 4-706. Appeals. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 7, 31 DCR 6088; Mar. 6, 1991, D.C. Law 8-197, § 2(h), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-606.
Legislative history of Law 5-146. — For legislative history of D.C. Law 5-146, see Historical and Statutory Notes following § 4-701.
Legislative history of Law 8-197. — For

legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.
Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-707. Severability. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8, 31 DCR 6088; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-607.
Legislative history of Law 5-146. — For legislative history of D.C. Law 5-146, see Historical and Statutory Notes following § 4-701.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-708. Rules. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8a, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-608.
Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-709. No creation of entitlement. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8b, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-609.
Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-710. Length of stay in emergency overnight shelter. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8c, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-610.
Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-711. Inspections. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8d, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-611.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-712. Notification of establishment of emergency overnight shelter. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8e, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-612.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-713. Toilet facilities. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 8f, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-613.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

§ 4-714. Housing goals; priorities. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-146, § 9, as added Mar. 6, 1991, D.C. Law 8-197, § 2(i), 37 DCR 4815; Oct. 22, 2005, D.C. Law 16-35, 32(b), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-614.

Legislative history of Law 8-197. — For legislative history of D.C. Law 8-197, see Historical and Statutory Notes following § 4-702.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Subchapter II. Frigid Temperature Protection.

§ 4-731. Shelter in District buildings. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-204, § 2, 36 DCR 454; Oct. 22, 2005, D.C. Law 16-35, 32(c), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-621.

Legislative history of Law 7-204. — Law 7-204, the “Frigid Temperature Protection Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-401, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-204, the “Frigid Temperature Protection Amendment Act of 1988”, see Mayor’s Order 89-123, June 2, 1989.

Mayor’s Orders. — Establishment—D.C. Hypothermia Procedures, see Mayor’s Order 2001-161, October 31, 2001 (48 DCR 10776).

§ 4-732. Prohibition; use of public school buildings. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-204, § 7, 36 DCR 454; Oct. 22, 2005, D.C. Law 16-35, 32(c), 52 DCR 8113.)

Prior Codifications. — 1981 Ed., § 3-622.

Legislative history of Law 7-204. — For legislative history of D.C. Law 7-204, see Historical and Statutory Notes following § 4-731.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-701.

CHAPTER 7A. SERVICES FOR HOMELESS INDIVIDUALS AND FAMILIES.

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Subchapter I. Definitions.

§ 4-751.01. Definitions.

For the purposes of this chapter, the term:

- (1) "Administrative Procedure Act" or "APA" means Chapter 5 of Title 2.
- (2) "Adult" means any individual who:

(A) Has reached the age of majority under District law as defined in § 46-101; or

(B) Qualifies as an emancipated minor under District law.

(3) “Apartment style” means a housing unit with:

(A) Separate cooking facilities and other basic necessities to enable families to prepare and consume meals;

(B) Separate bathroom facilities for the use of the family; and

(C) Separate sleeping quarters for adults and minor children in accordance with the occupancy standards of Title 14 of the District of Columbia Municipal Regulations (Housing).

(4) “Appropriate permanent housing” means permanent housing that does not jeopardize the health, safety, or welfare of its occupants, meets the District’s building code requirements, and is affordable for the client.

(5) “Appropriately trained and qualified” means having received specialized training designed to teach the skills necessary to successfully perform one’s job and to work compassionately with individuals and families who are homeless or at imminent risk of becoming homeless.

(6) “Basic necessities” means a dinette set, refrigerator, stove, exhaust fan or window, storage cabinets, cookware, flatware, and tableware.

(7) “Client” means an individual or family seeking, receiving, or eligible for services from a program covered by § 4-754.01.

(8) “Continuum of Care” means the comprehensive system of services for individuals and families who are homeless or at imminent risk of becoming homeless and designed to serve clients based on their individual level of need. The Continuum of Care may include crisis intervention, outreach and assessment services, shelter, transitional housing, permanent supportive housing, and supportive services.

(9) “Crisis intervention” means assistance to prevent individuals and families from becoming homeless, which may include, but need not be limited to, cash assistance for security deposits, rent or mortgage payments, utility assistance, credit counseling, mediation with landlords, and supportive services.

(10) “Culturally competent” means the ability of a provider to deliver or ensure access to services in a manner that effectively responds to the languages, values, and practices present in the various cultures of its clients so the provider can respond to the individual needs of each client.

(11) “Day program” means a facility that provides open access to structured activities during set hours of the day to meet the supportive services needs of individuals and families who are homeless or at imminent risk of becoming homeless.

(12) “Department” means the Department of Human Services.

(13) “District” means the District of Columbia government, its agents, or its designees.

(14) “Drop-in center” means a facility that delivers supportive services that may include food, clothing, showers, medical services, and employment services.

(15) “Drug” means a controlled substance as defined in § 48-901.02(4), or

the Controlled Substances Act of 1970, approved October 27, 1970 (84 Stat. 1242; 21 U.S.C. § 801 et seq.).

(16) "Family" means:

(A) A group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit; or

(B) A pregnant woman in her third trimester.

(17) "Group home" means a housing unit with:

(A) Sleeping quarters that may be shared;

(B) Shared cooking and bathroom facilities; and

(C) Other basic necessities to enable individuals or families to prepare and consume meals.

(17A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(18) "Homeless" means:

(A) Lacking a fixed, regular residence that provides safe housing, and lacking the financial means to acquire such a residence immediately; or

(B) Having a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or

(ii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(19) "Housing First" means a program that provides clients with immediate access to independent permanent housing and supportive services without prerequisites for sobriety or participation in psychiatric treatment. Clients in Housing First programs may choose the frequency and type of supportive services they receive and refusal of services will have no consequence for their access to housing or on continuation of their housing and supportive services.

(20) "Hyperthermia shelter" means a public or private building that the District shall make available, for the purpose of providing shelter to individuals or families who are homeless and cannot access other shelter, whenever the actual or forecasted temperature or heat index rises above 95 degrees Fahrenheit. The term "hyperthermia shelter" does not include overnight shelter.

(21) "Hypothermia shelter" means a public or private building that the District shall make available, for the purpose of providing shelter to individuals or families who are homeless and cannot access other shelter, whenever the actual or forecasted temperature, including the wind chill factor, falls below 32 degrees Fahrenheit.

(22) "Individual with a disability" means a person with a physical or mental impairment that substantially limits the major life activities of the person.

(23) "Imminent risk of becoming homeless" means the likelihood that an individual's or family's circumstances will cause the individual or family to become homeless in the absence of prompt government intervention.

(24) “Imminent threat to the health or safety” means an act or credible threat of violence on the grounds of a shelter or supportive housing facility.

(25) “Interagency Council” means the Interagency Council on Homelessness established pursuant to § 4-752.01.

(26) “Low barrier shelter” means an overnight housing accommodation for individuals who are homeless, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter to individuals without imposition of identification, time limits, or other program requirements;

(27) “Member agency” or “member agencies” means the District agencies or divisions thereof represented on the Interagency Council pursuant to § 4-752.01(b).

(27A) “Office” means the Office of Shelter Monitoring established pursuant to § 4-754.51.

(28) “Permanent supportive housing” means supportive housing for an unrestricted period of time for individuals and families who were once homeless and continue to be at imminent risk of becoming homeless, including persons with disabilities as defined in 24 C.F.R. § 582.5, for whom self-sufficient living may be unlikely and whose care can be supported through public funds.

(29) “Program Rules” means the set of provider rules, client rights, and complaint and appeal procedures, including those enumerated in this chapter, proposed by a particular provider for the purpose of governing the behavior and treatment of its clients and approved by the Mayor subject to § 4-754.32.

(30) “Provider” means an individual or entity within the Continuum of Care that operates a program covered by § 4-754.01.

(31) “Public assistance” means government-funded payments in or by money, medical care, remedial care, shelter, goods or services to, or for the benefit of, needy persons.

(32) “Resident of the District” means an individual or family who:

(A) Is not receiving locally administered public assistance from a jurisdiction other than the District;

(B) Is living in the District voluntarily and not for a temporary purpose and who has no intention of presently moving from the District, which shall be determined and applied in accordance with § 4-205.03; and

(C) Demonstrates residence by providing:

(i) A mailing address in the District, valid within the last 2 years;

(ii) Evidence that the individual or family has applied or is receiving public assistance from the District;

(iii) Evidence that the individual or a family member is attending school in the District; or

(iv) Written verification by a verifier who attests, to the best of the verifier’s knowledge, that the individual or family lives in the District voluntarily and not for a temporary purpose and has no intention of presently moving from the District.

(32A) “Safe housing” means housing that does not jeopardize the health, safety, or welfare of its occupants and that permits access to electricity, heat, and running water for the benefit of occupants.

(33) "Sanction" means an adverse action taken by a provider affecting the delivery of services to a client, and may include loss of privileges or denial, reduction, delay, transfer for inappropriate or punitive reasons, suspension, or termination of services.

(34) "Service plan" means a written plan collaboratively developed and agreed upon by both the provider and the client, consisting of time-specific goals and objectives designed to promote self-sufficiency and attainment of permanent housing and based on the client's individually assessed needs, desires, strengths, resources, and limitations.

(35) "Severe weather conditions" means the outdoor conditions whenever the actual or forecasted temperature, including the wind chill factor or heat index, falls below 32 degrees Fahrenheit or rises above 95 degrees Fahrenheit.

(36) "Severe weather shelter" means hyperthermia shelter or hypothermia shelter.

(37) "Shelter" means severe weather shelter, low barrier shelter, and temporary shelter.

(38) "Supportive housing" means transitional housing and permanent supportive housing.

(39) "Supportive services" means services addressing employment, physical health, mental health, alcohol and other substance abuse recovery, child care, transportation, case management, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing.

(40) "Temporary shelter" means:

(A) A housing accommodation for individuals who are homeless that is open either 24 hours or at least 12 hours each day, other than a severe weather shelter or low barrier shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services; or

(B) A 24-hour apartment-style housing accommodation for individuals or families who are homeless, other than a severe weather shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services.

(41) "Transitional housing" means a 24-hour housing accommodation, provided directly by, or through contract with or grant from, the District, for individuals and families who:

(A) Are homeless;

(B) Require a structured program of supportive services for up to 2 years or as long as necessary in order to prepare for self-sufficient living in permanent housing; and

(C) Consent to a case management plan developed collaboratively with the provider.

(41A) "Verifier" means a District resident or a provider who knows where an individual or family seeking shelter lives and who produces evidence of his or her employment as a provider in the case of a provider, or own District residency in the case of a District resident by providing a:

(A) Valid District driver's license or nondriver's identification;

- (B) District voter registration card;
- (C) Valid lease, rental agreement, rent receipt, deed, settlement papers, or mortgage statement for a residence in the District;
- (D) Valid homeowner's or renter's insurance policy for a residence in the District;
- (E) District property tax bill issued within the last 60 days;
- (F) Utility bill for water, gas, electric, oil, cable, or a land-line telephone issued within the last 60 days; or
- (G) Pay stub issued within the last 30 days showing a District address and District withholding taxes.

(42) "Weapon" means any pistol or other firearm (or imitation thereof), or other dangerous or deadly weapon, including a sawed-off shot gun, shot gun, machine gun, rifle, dirk, bowie knife, butcher knife, switch blade knife, razor, black jack, billy club or metallic or other false knuckles, as referenced in § 22-4502, and any air gun, air rifle, canon, torpedo, bean shooter, sling, projectile, dart, BB gun, spring gun, blow gun, other dangerous missile or explosive, or other dangerous weapon or ammunition of any character, as referenced in Chapter 23 of Title 24 of the District of Columbia Municipal Regulations.

(Oct. 22, 2005, D.C. Law 16-35, § 2, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(b), 54 DCR 1097; June 25, 2008, D.C. Law 17-177, § 7(a), 55 DCR 3696; Apr. 8, 2011, D.C. Law 18-367, § 2(a), 58 DCR 987.)

Effect of amendments. — D.C. Law 16-296, in par. (9), added utility payments to the scope of the paragraph; rewrote par. (18)(A); and added pars. (27A) and (32A). Prior to amendment, par. (18)(A) read:

"(A) Lacking a fixed, regular residence that does not jeopardize the health, safety, or welfare of its occupants, and lacking the financial ability to immediately acquire one; or"

D.C. Law 17-177 added par. (17A).

D.C. Law 18-367 rewrote par. (32); and added par. (41). Prior to amendment, par. (32) read as follows: "(32) 'Resident of the District' means an individual or family who is living in the District voluntarily and not for a temporary purpose and who has no intention of presently moving from the District. The term 'resident of the District' shall be interpreted and applied in accordance with § 4-205.03."

Legislative history of Law 16-35. — Law 16-35, the "Homeless Services Reform Act of 2005", was introduced in Council and assigned Bill No. 16-103 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 7, 2005, and July 6, 2005, respectively. Signed by the Mayor on August 3, 2005, it was assigned Act No. 16-169 and transmitted to both Houses of Congress for its review. D.C. Law 16-35 became effective on October 22, 2005.

Legislative history of Law 16-296. — Law 16-296, the "Shelter Monitoring and Emer-

gency Assistance Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-625, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-655 and transmitted to both Houses of Congress for its review. D.C. Law 16-296 became effective on March 14, 2007.

Legislative history of Law 17-177. — Law 17-177, the "Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

Legislative history of Law 18-367. — Law 18-367, the "Homeless Services Reform Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-1059, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on

January 27, 2011, it was assigned Act No. 18-718 and transmitted to both Houses of Congress for its review. D.C. Law 18-367 became effective on April 8, 2011.

authority pursuant to D.C. Law 16-35, the Homeless Services Reform Act of 2005, see Mayor's Order 2007-80, April 2, 2007 (54 DCR 7809).

Delegation of Authority. — Delegation of

Subchapter II. Interagency Council on Homelessness.

§ 4-752.01. Establishment of Interagency Council on Homelessness.

(a) There is established in the District the Interagency Council on Homelessness for the purpose of facilitating interagency, cabinet-level leadership in planning, policymaking, program development, provider monitoring, and budgeting for the Continuum of Care of homeless services.

(b) The Interagency Council is composed of:

(1) The City Administrator, who shall serve as chairperson of the Interagency Council;

(2) The administrative head of each of the following entities or divisions thereof:

- (A) Department of Human Services;
- (B) Department of Mental Health;
- (C) Child and Family Services Agency;
- (D) Department of Housing and Community Development;
- (E) Department of Health;
- (F) District of Columbia Housing Authority;
- (G) Department of Corrections;
- (H) Department of Employment Services;
- (I) Office of the State Superintendent of Education;
- (J) Homeland Security and Emergency Management Agency;
- (K) Office of Property Management; and
- (L) Metropolitan Police Department;

(3) A representative of any private entity designated to approve or allocate any grants or contracts, on behalf of the Mayor, for services within the Continuum of Care;

(4) A representative from a minimum of 4 and a maximum of 10 organizations that are providing services within the Continuum of Care;

(5) A minimum of 2 and a maximum of 5 homeless or formerly homeless individuals;

(6) A minimum of 2 and a maximum of 5 advocates for the District of Columbia's homeless population;

(7) The Chairman of the Council, or his or her designee, and the Chairman of the committee of the Council having purview over homeless services, or his or her designee, both of whom shall be non-voting members; and

(8) The administrative head of the Office of Shelter Monitoring, who shall be a non-voting member.

(c) All non-government members of the Interagency Council described in subsections (b)(4)-(6) of this section shall be nominated for appointment by the

Mayor and approved by the Council. The Mayor shall transmit to the Council, within 90 days of October 22, 2005, nominations of each non-government member of the Interagency Council for a 60-day period of review, excluding days of Council recess. If the Council does not approve or disapprove a nomination by resolution within the 60-day review period, the nomination shall be deemed approved.

(Oct. 22, 2005, D.C. Law 16-35, § 4, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-262, § 405, 54 DCR 794; Mar. 14, 2007, D.C. Law 16-296, § 2(d), 54 DCR 1097; Aug. 16, 2008, D.C. Law 17-219, § 5004(a), 55 DCR 7598.)

Effect of amendments. — D.C. Law 16-262, in subsec. (b)(2)(J), substituted “Homeland Security and Emergency Management Agency” for “District of Columbia Emergency Management Agency”.

D.C. Law 16-296, in subsec. (b), added par. (8).

D.C. Law 17-219, in subsec. (b)(2)(I), substituted “Office of the State Superintendent of Education” for “District of Columbia Public Schools”.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned

Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-126.

Short title. — Short title: Section 5003 of D.C. Law 17-219 provided that subtitle B of title V of the act may be cited as the “Housing First and Homeless Services Reform Amendment Act of 2008”.

§ 4-752.02. Powers and duties of the Interagency Council on Homelessness.

(a) The Interagency Council shall provide leadership in the development of strategies and policies that guide the implementation of the District’s policies and programs for meeting the needs of individuals and families who are homeless or at imminent risk of becoming homeless.

(b) In fulfilling the responsibility described in subsection (a) of this section, the Interagency Council shall:

(1) Coordinate an annual, community-wide needs-assessment and planning process to identify, prioritize, and target needs for services within the Continuum of Care. The needs-assessment shall take into account existing data and include input from at least one public hearing, which shall be held at least once each year;

(2) At least every 5 years, prepare and publish a strategic plan for services within the Continuum of Care that takes into account existing data and community input;

(3) Prepare an annual plan detailing how the District intends to provide or arrange for services within the Continuum of Care that takes into account existing data and community input;

(4) Review on a regular basis the efforts of each member of the Interagency Council to fulfill the goals and policies of the annual plan prepared pursuant to paragraph (3) of this subsection, including a review of the number

and nature of contracts and grants entered into by each agency to provide services within the Continuum of Care;

(5) Prepare and submit to the Mayor an annual written report evaluating the efforts of each member agency of the Interagency Council to meet the goals and policies of the annual plan prepared pursuant to paragraph (3) of this subsection;

(6) Direct the Office of Property Management to identify vacant public buildings or tax-foreclosed buildings to be used as shelter and supportive housing facilities;

(7) Provide input into the District's planning and application for federal funds for services within the Continuum of Care. All applications for federal funds shall take into account the strategic plan developed by the Interagency Council prepared pursuant to paragraph (2) of this subsection;

(8) Have access to data collected and generated by a computerized information system as set up by the Mayor pursuant to § 4-753.02(d). The data may include the number of beds or units available in the District's shelter and supportive housing facilities, the availability of supportive services in the District, and the current usage of and unmet demand for such beds, units, and services;

(9) By September 1 of each year, develop a plan, consistent with the right of clients to shelter in severe weather conditions, describing how member agencies will coordinate to provide hypothermia shelter and identifying the specific sites that will be used as hypothermia shelters; and

(10) Review reports of the fair hearings and administrative reviews requested or received by clients within the Continuum of Care, which shall include the provider party to the appeal, the subject matter of the appeal, and the final disposition of the appeal.

(c) The Mayor shall, no later than February 1 of each year, make available to all Interagency Council members the District's proposed budget breakdown of each agency's appropriations for services within the Continuum of Care. The Interagency Council shall give comments to the Mayor regarding the proposed budget.

(d) Each member agency of the Interagency Council shall:

(1) Conduct or commission an annual audit of any private entity designated by the agency to approve or allocate any grants or contracts, on behalf of the Mayor, for services within the Continuum of Care, and make available a report of the audit to all Interagency Council members;

(2) Offer training and technical assistance to its employees who directly provide services within the Continuum of Care and to any providers with which the member agency or its designee contracts to deliver the services; and

(3) Report to the Interagency Council on a quarterly basis currently available data on the number of individuals and families that applied for homeless services and the number of homeless individual or families that were served by the agency and its contractors.

(Oct. 22, 2005, D.C. Law 16-35, § 5, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Editor's notes. — Section 5052 of D.C. Law 18-111 provided: "Sec. 5052. Winter plan report. "By September 1, 2010, the Department of Human Services shall submit to the Council, along with the annual winter plan required by section 5(b)(9) of Homeless Services Reform Act

of 2005, effective October 22, 2005 (D.C. Law 16-36; D.C. Official Code § 4-752.02(b)(9)), an evaluation of case management services provided to homeless individuals during the hypothermia season, including a detailed protocol to evaluate residents' needs to help them emerge from homelessness."

§ 4-752.03. Operation of the Interagency Council on Homelessness.

(a) The Interagency Council shall meet not less than quarterly. All meetings of the Interagency Council shall comply with the following requirements:

(1) A quorum of one-third of the appointed representatives of member agencies, one-third of appointed representatives of providers of homeless services, and one-third of the appointed homeless or formerly homeless individuals or advocates must be present in order to conduct the business of the Interagency Council;

(2) The meetings of the Interagency Council, and the meetings of any committees it shall establish pursuant to subsection (c) of this section, shall be subject to the open meeting provisions of § 1-207.42; and

(3) The Interagency Council shall provide a reasonable opportunity at the beginning of each meeting during which members of the public may comment on matters relevant to the work of the Interagency Council.

(b) The Interagency Council shall enact rules of procedure or bylaws to guide the regular operation of the Interagency Council. The rules of procedure or bylaws shall be made available to the public upon request.

(c) The Interagency Council may establish committees to aid in conducting its business. No meeting of a committee of the Interagency Council shall qualify as a meeting of the Interagency Council for purposes of fulfilling the requirements in subsection (a) of this section.

(d) The Mayor shall, within 30 days of October 22, 2005, designate an existing department or agency to provide staff assistance and support to the Interagency Council.

(Oct. 22, 2005, D.C. Law 16-35, § 6, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Subchapter III. Continuum of Care.

§ 4-753.01. Continuum of Care for individuals and families who are homeless.

(a) The District's provision of homeless services shall be based on a Continuum of Care that offers a comprehensive range of services through various member agencies and is designed to meet the specific, assessed needs of individuals and families who are homeless or at imminent risk of becoming homeless. The District shall respond to the changing needs of individuals and

families by ensuring that transfer between and among services within the Continuum of Care is fluid and allows clients to modify the intensity of services they receive to meet their needs, preferences, and changing circumstances.

(b) The Continuum of Care may include the following range of services:

(1) Crisis intervention for the purpose of preventing homelessness by enabling individuals and families at imminent risk of becoming homeless to remain in or access permanent housing; provided, that the Mayor shall not offer crisis intervention services authorized by this paragraph until the Chief Financial Officer has certified the availability of fiscal year 2006 funding pursuant to section 1016(5) of D.C. Law 16-33;

(2) Outreach and assessment, including the operation of a hotline, for the purpose of identifying the housing and supportive service needs of individuals and families who are homeless or at imminent risk of becoming homeless and linking them to appropriate services;

(3) Shelter to meet the housing needs of individuals and families who are homeless through the provision of:

(A) Severe weather shelter for the purpose of protecting lives in extreme hot and cold weather;

(B) Low barrier shelter for individuals for the purpose of sheltering and engaging individuals who avoid temporary shelter because of identification, time limit, or other program requirements; and

(C) Temporary shelter for individuals and families for the purpose of meeting short-term housing needs and other supportive service needs;

(4) Supportive housing to meet the longer-term housing needs of individuals and families who are homeless through the provision of:

(A) Transitional housing for the purpose of providing eligible individuals and families who are homeless with long-term housing and supportive services in order to prepare them for self-sufficient living in permanent housing; and

(B) Permanent supportive housing for the purpose of providing eligible individuals and families who are homeless or at imminent risk of becoming homeless with housing and supportive services;

(C) Housing First for the purpose of providing eligible individuals and families who are homeless with housing and supportive services;

(5) Supportive services for the purpose of providing individuals and families who are homeless or at imminent risk of becoming homeless with services that address their housing, employment, physical health, mental health, alcohol and other substance abuse recovery, child care, case management, transportation, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing. These services may, but need not, be delivered through day programs, drop-in centers, shelters, and transitional and permanent supportive housing providers, or through referrals to other appropriate service providers.

(c)(1) Whenever the actual or forecasted temperature, including the wind chill factor, falls below 32 degrees Fahrenheit, or whenever the actual or forecasted temperature or heat index rises above 95 degrees Fahrenheit, the District shall make available appropriate space in District of Columbia public

or private buildings and facilities for any resident of the District who is homeless and cannot access other housing arrangements. The District may make such space available for any person who is not a resident of the District, is homeless, and cannot access other housing arrangements; provided, that the District shall give priority to residents of the District.

(2) In making appropriate space available in District of Columbia public or private buildings and facilities, the District shall not use District of Columbia Public Schools buildings currently being used for educational purposes without the prior approval of the Mayor.

(3)(A) Low-barrier shelters and severe weather shelters operating as low-barrier shelters shall not be required to receive demonstration of residency or prioritize District residents.

(B) The Mayor may determine whether a person seeking shelter by reason of domestic violence, sexual assault, or human trafficking is a resident of the District without receiving demonstration of District residency in accordance with § 4-751.01(32).

(4) For the purposes of this subsection the term “cannot access other housing arrangements” means that the homeless person is living in a place not intended as a residence, such as outdoors, in a vehicle, or in a condemned or abandoned building or is living in a situation that is dangerous to the health or safety of the person or of any family member.

(d)(1) Except as provided in paragraph (2) of this subsection, the Mayor shall not place homeless families in non-apartment-style shelters.

(2) The Mayor is authorized to place homeless families in non-apartment-style shelters that are private rooms only when no apartment-style shelters are available.

(e) Pursuant to § 4-756.02, the Mayor shall issue rules on the administration of emergency assistance grants offered as crisis intervention services to individuals and families in need of cash assistance for mortgage, rent, or utility bills in arrears or for a security deposit or first month’s rent.

(Oct. 22, 2005, D.C. Law 16-35, § 7, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(e), 54 DCR 1097; Apr. 8, 2011, D.C. Law 18-367, § 2(b), 58 DCR 987.)

Effect of amendments. — D.C. Law 16-296 added subsec. (e).

D.C. Law 18-367 rewrote subsecs. (c) and (d).
Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

Legislative history of Law 18-367. — For history of Law 18-367, see notes under § 4-751.01.

References in text. — Section 1016(5) of D.C. Law 16-33, referred to in par. (1) of subsec. (b), is published at 52 DCR 7503.

Mayor’s Orders. — Extension of Disaster Relocation and Rental Assistance Program Benefits Pursuant to Mayor’s Order 2008-63, effective April 10, 2008, see Mayor’s Order 2010-96, June 4, 2010 (57 DCR 4917).

Establishment of Emergency Rental Assistance Program and Delegation of Authority Pursuant to D.C. Law 16-35, the Homeless Services Reform Act of 2005, see Mayor’s Order 2006-115, August 30, 2006 (53 DCR 7550).

Establishment of a Disaster Relocation and Rental Assistance Program, see Mayor’s Order 2008-63, April 10, 2008 (55 DCR 5516).

§ 4-753.01a. Housing First Fund.

(a) There is established as a nonlapsing fund the Housing First Fund ("Fund"), which shall be used to provide vulnerable families and individuals who are homeless with supportive services and housing assistance. The Fund shall be administered by the Department of Human Services in concert with a memorandum of understanding with the Department of Housing and Community Development for facility development and acquisition services.

(b)(1) The Fund shall be comprised of monies appropriated into the Fund, including grants, and revenue generated from the disposition or long-term lease of certain real property assets designated by the Mayor.

(2) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in § 4-753.01(b)(4) without regard to fiscal year limitation, subject to authorization by Congress.

(Oct. 22, 2005, D.C. Law 16-35, § 7a, as added Aug. 16, 2008, D.C. Law 17-219, § 5004(a), 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 4-126.

Short title. — Short title: Section 5050 of D.C. Law 18-111 provided that subtitle F of title V of the act may be cited as the "Human Services Reporting Requirements Act of 2009".

Editor's notes. — Section 5051 of D.C. Law 18-111 provided: "Sec. 5051. Housing First re-

port. "By January 30, 2010, the District of Columbia Auditor shall submit to the Council a financial impact report measuring the government-wide savings produced by the District's Housing First Program, including in emergency services, physical and mental health services, substance abuse services, personal safety, police services, and incarceration."

§ 4-753.02. Eligibility for services within the Continuum of Care.

(a) An individual or family is eligible to receive services within the Continuum of Care if the individual or family:

(1) Is homeless or at imminent risk of becoming homeless;

(2) Is a resident of the District, as defined by § 4-751.01(32), except that low-barrier shelters and severe weather shelters operating as low-barrier shelters shall not be required to receive demonstration of residency or prioritize District residents, pursuant to subsection (b) of this section; and

(3) Meets any additional eligibility requirements that have been established pursuant to § 4-754.31 by the provider from whom services are sought.

(a-1) Notwithstanding subsection (a)(2) of this section, the Mayor may exclude certain services within the Continuum of Care from the residency requirement; provided, that the Mayor publishes which services are excluded from the requirement.

(b) No individual or family may be deemed ineligible for services solely because the individual or family cannot establish proof of homelessness or residency at the time of the individual or family's application for assistance. The District shall give priority, however, to an individual or family who

establishes proof of residency and homelessness at the time of application for assistance.

(c)(1) The Mayor shall operate at least one central intake center for families for the purposes of:

(A) Assessing the eligibility of families for services within the Continuum of Care and making appropriate referrals for those services; and

(B) Serving as a resource center for families who are seeking information about the availability of services within the Continuum of Care.

(1A) The Mayor shall operate an intake center specializing in crisis intervention services and located in close proximity to the Landlord and Tenant Branch of the Superior Court of the District of Columbia.

(2) Families who are eligible for services within the Continuum of Care shall receive appropriate referrals to the first available provider based on the chronological order in which they apply for assistance, consistent with any additional eligibility requirements established pursuant to § 4-754.32 by the provider from whom services are sought.

(3) Any family who is determined to be eligible for services pursuant to subsection (c)(1)(A) of this section, but who is not immediately served due to lack of capacity, shall be placed on one or more waiting lists for the services sought and shall be served in the order in which appropriate referrals become available.

(4) Notwithstanding paragraph (2) of this subsection, in determining what is an “appropriate referral,” the Mayor shall consider relevant factors, including prior receipt of services, disability, family size, affordability of housing and age, and may use these factors to prioritize a family’s placement in shelter or other service.

(5) The Mayor shall not impose or apply eligibility criteria that exclude or tend to exclude an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any services within the Continuum of Care, unless such criteria are shown to be necessary for the provision of the services.

(d) The Mayor shall operate a computerized information system to collect, maintain, and distribute up-to-date information regarding the number of beds or units available in shelter and supportive housing in the District, the availability of supportive services, and the current usage and unmet demand for such beds, units, and services.

(Oct. 22, 2005, D.C. Law 16-35, § 8, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(f), 54 DCR 1097; Apr. 8, 2011, D.C. Law 18-367, § 2(c), 58 DCR 987.)

Effect of amendments. — D.C. Law 16-296, in subsec. (c), added par. (1A).

D.C. Law 18-367, in subsec. (a)(2), substituted “§ 4-751.01(32), except that low-barrier shelters and severe weather shelters operating as low-barrier shelters shall not be required to receive demonstration of residency or prioritize District residents, pursuant to subsection (b) of

this section; and” for “§ 4-205.03”; added subsec. (a-1); and, in subsec. (b), substituted “for assistance. The District shall give priority, however, to an individual or family who establishes proof of residency and homelessness at the time of application for assistance” for “for assistance”.

Legislative history of Law 16-35. — For

Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

Legislative history of Law 18-367. — For history of Law 18-367, see notes under § 4-751.01.

§ 4-753.03. Grace period for establishing residency.

An individual or family seeking shelter during severe weather conditions may be afforded a 3-day grace period to establish District residency.

(Oct. 22, 2005, D.C. Law 16-35, § 8a, as added Apr. 8, 2011, D.C. Law 18-367, § 2(d), 58 DCR 987.)

Emergency legislation. — For temporary (90 day) addition of section, see § 5102 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 5102 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-367. — For history of Law 18-367, see notes under § 4-751.01.

Subchapter IV. Provision of Services for Homeless Individuals and Families.

PART A.

APPLICATION OF SUBCHAPTER.

§ 4-754.01. Application.

(a) The provisions in this subchapter shall apply to:

(1) Each program within the Continuum of Care offered by the District of Columbia or by a provider receiving funding for the program from either the District of Columbia or the federal government, if such funds are administered, whether by grant, contract, or other means, by the Department of Human Services or its designee; and

(2) Clients of programs covered under paragraph (1) of this subsection.

(b) In multi-program agencies, the provisions in this subchapter shall only apply to those programs that meet the criteria in subsection (a) of this section and clients of those programs.

(c) This section shall not be construed to expand or limit the requirements of any other provision of this chapter.

(Oct. 22, 2005, D.C. Law 16-35, § 3, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(c), 54 DCR 1097.)

Effect of amendments. — D.C. Law 16-296, made a technical correction that required no change in the text.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

PART B.

CLIENT RIGHTS AND RESPONSIBILITIES.

§ 4-754.11. Client rights.

Clients served within the Continuum of Care shall have the right to:

(1) At all times, be treated by providers and the Department with dignity and respect;

(2) Access services within the Continuum of Care free from discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, and source of income, and in accordance with Unit A of Chapter 14 of Title 2, the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 328; 42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1095; 29 U.S.C. § 701 et seq.), Title II of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 243; 42 U.S.C. § 2000a et seq.), and subchapter II of Chapter 19 of Title 2 [§ 2-1931 et seq.];

(3) Receive reasonable modifications to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the client's provider demonstrates that the modifications would fundamentally alter the nature of the services;

(4) Access services within the Continuum of Care free from verbal, emotional, sexual, financial, and physical abuse and exploitation;

(5) Shelter in severe weather conditions;

(6) At a reasonable time and with reasonable prior notice, view and copy, or have an authorized representative view and copy, all records and information that are related to the client and maintained by the client's provider, including any relevant personal, social, legal, financial, educational, and medical records and information, subject to the provisions of paragraph (7) of this subsection;

(7) Confidential treatment by the Department and providers of personal, social, legal, financial, educational, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, in a manner consistent with the confidentiality requirements of District and federal law;

(8) Engage in or abstain from the practice of religion, including the religion of a particular provider or other clients;

(9) Upon request, be told the name and job title of any provider staff member delivering services;

(10) Provide input and feedback to providers on their delivery of services;

(11) File complaints with, testify before, or provide information to a provider or the Mayor regarding the provider's delivery of services or treatment of the client;

(12) Participate actively in development of any service plan for the client, be told of the progress made toward the goals of that service plan, and receive a review of the service plan upon request;

(13) Be free from testing for drugs or alcohol except when:

(A) Program guidelines prohibit intoxication and a licensed social worker with experience identifying indications of drug or alcohol use or a certified addiction counselor determines that there is reasonable cause to believe that the client is engaging in drug or alcohol use; or

(B) A client consents to drug or alcohol testing as part of the client's case management plan developed in accordance with paragraph (12) of this subsection;

(14) Meet and communicate privately with attorneys, advocates, clergy, physicians, and other professionals;

(15) Timely notice, where required by § 4-754.33, of any decision by the Department or a provider that adversely affects the client's receipt of services within the Continuum of Care;

(16) Appeal, where permitted by §§ 4-754.41 and 4-754.42, of any decision by the Department or a provider that adversely affects the client's receipt of services within the Continuum of Care;

(17) Be free from retaliation, punishment, or sanction for exercising any rights provided under this chapter; and

(18) Continuation of shelter and supportive housing services without change, other than transfer pursuant to § 4-754.34 or emergency transfer, suspension, or termination pursuant to § 4-754.38, pending the outcome of any fair hearing requested within 15 calendar days of receipt of written notice of a suspension or termination.

(Oct. 22, 2005, D.C. Law 16-35, § 9, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(g), 54 DCR 1097; June 25, 2008, D.C. Law 17-177, § 7(b), 55 DCR 3696.)

Effect of amendments. — D.C. Law 16-296, in par. (11), inserted “testify before, or provide information to” following “File complaints with”.

D.C. Law 17-177, in par. (2), substituted “sexual orientation, gender identity or expression” for “sexual orientation”.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 4-751.01.

§ 4-754.12. Additional rights for clients in temporary shelter or supportive housing.

Clients residing in temporary shelter or supportive housing shall have the right to:

(1) Receive visitors in designated areas of the shelter or housing premises during reasonable hours and under such reasonable conditions as specified in the provider's Program Rules established pursuant to § 4-754.32;

(2) Leave and return to the shelter or housing premises within reasonable hours as specified by the Program Rules established pursuant to § 4-754.32;

(3) Reasonable prior notice specifying the date and time of any inspections of a client's living quarters and of the provider staff member authorized to perform the inspection, except when, in the opinion of the provider's executive or program director, there is reasonable cause to believe that the client is in

possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person on the provider's premises and such reasonable cause is documented in the client's record;

(4) Be present or have an adult member of the family present at the time of any inspection unless, in the opinion of the provider's executive or program director, there is reasonable cause to believe that the client is in possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person on the provider's premises and such reasonable cause is documented in the client's record;

(5) Reasonable privacy in caring for personal needs and in maintaining personal living quarters; and

(6) Conduct their own financial affairs, subject to the reasonable requirements of Program Rules established pursuant to § 4-754.32 or to a service plan pursuant to § 4-754.11(12).

(Oct. 22, 2005, D.C. Law 16-35, § 10, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.13. Client responsibilities.

(a) Clients receiving services within the Continuum of Care shall:

(1) Seek appropriate permanent housing or Housing First, except when the client is residing in severe weather and low barrier shelter;

(2) Seek employment, education, or training when appropriate, except when the client is residing in severe weather and low barrier shelter;

(3) Refrain from the following behaviors while on a provider's premises:

(A) The use or possession of alcohol or illegal drugs;

(B) The use or possession of weapons;

(C) Assaulting or battering any individual, or threatening to do so; and

(D) Any other acts that endanger the health or safety of the client or any other individual on the premises;

(4) Ensure that children within the client's family and physical custody are enrolled in school, where required by law;

(5) Ensure that the client's minor children receive appropriate supervision while on the provider's premises;

(6) Utilize child care services when necessary to enable the adult client to seek employment or housing or to attend school or training, unless the client meets any of the exemptions of § 4-205.19g, or section 5809.4(b)-(e) of Title 29 of the District of Columbia Municipal Regulations, including any subsequent revisions.

(7) Respect the safety, personal rights, and private property of provider staff members and other clients;

(8) Maintain clean sleeping and living areas, including bathroom and cooking areas;

(9) Use communal areas appropriately, with attention to cleanliness and respect for the interests of other clients;

(10) Be responsible for one's own personal property; and

(11) Follow all Program Rules established by a provider pursuant to § 4-754.32.

(b) Clients residing in temporary shelter and transitional housing shall participate in the provider's assessment and case management services.

(Oct. 22, 2005, D.C. Law 16-35, § 11, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

PART C.

PROVIDER STANDARDS.

§ 4-754.21. Common standards for all providers.

Providers shall:

- (1) Ensure staff members are appropriately trained, qualified, and supervised;
- (2) Maintain safe, clean, and sanitary facilities that meet all applicable District health, sanitation, fire, building, and zoning codes;
- (3) Assist clients to prepare for living in permanent housing, as deemed appropriate by the provider and the client;
- (4) Collaborate and coordinate with other service providers to meet the client's needs, as deemed appropriate by the provider and the client;
- (5) Receive and utilize client input and feedback for the purpose of evaluating and improving the provider's services;
- (6) Establish procedures for the provider's internal complaint procedures;
- (7) Provide clients with copies of printed information describing the range of services within the Continuum of Care;
- (8) In accordance with § 4-753.02(c) and as openings occur, inform all clients of services for which they may be eligible;
- (9) Deliver or provide access to culturally competent services and language assistance for clients with limited English proficiency;
- (10) Provide services free from discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, and source of income, and in accordance with Unit A of Chapter 14 of Title 2, the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 328; 42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1095; 29 U.S.C. § 701 et seq.), and Title II of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 243; 42 U.S.C. § 2000a et seq.);
- (11) Provide reasonable modifications to policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the provider demonstrates that making the modifications would fundamentally alter the nature of the services;

(12) Ensure confidential treatment of the personal, social, legal, financial, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, consistent with the confidentiality requirements of District and federal law;

(13) Establish Program Rules in accordance with § 4-754.32;

(14) Provide notice of its Program Rules in accordance with § 4-754.33;

(15) Collect, record, and annually report to the Mayor all complaints, including requests for fair hearings or administrative reviews, made against or related to the provider during the year; and

(16) Establish procedures to revise practices and policies as may be necessary to ensure that clients may access services free from discrimination on the basis of disability.

(Oct. 22, 2005, D.C. Law 16-35, § 12, 52 DCR 8113; June 25, 2008, D.C. Law 17-177, § 7(c), 55 DCR 3696.)

Effect of amendments. — D.C. Law 17-177, in par. (10), substituted “sexual orientation, gender identity or expression” for “sexual orientation”.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 4-751.01.

§ 4-754.22. Additional standards for providers of severe weather shelter.

In addition to the standards in § 4-754.21, providers of severe weather shelter shall provide:

(1) When severe weather conditions continue overnight, a clean bed with clean linens, pad, and blanket for each bed;

(2) Basic needs, such as food and clothing and other supportive services, or information about where to obtain such basic needs and supportive services;

(3) 24-hour, properly functioning toilet facilities;

(4) Cool water, available via water cooler, fountain, or other means; and

(5) Properly functioning heating and cooling systems during the appropriate seasons.

(Oct. 22, 2005, D.C. Law 16-35, § 13, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.23. Additional standards for providers of low barrier shelter.

In addition to the requirements in §§ 4-754.21 and 4-754.22, providers of low barrier shelter shall provide:

(1) Case management services with an appropriately trained, qualified, and supervised case manager, which shall include the development of a service plan;

(2) Hot shower facilities; and

(3) Personal hygiene supplies.

(Oct. 22, 2005, D.C. Law 16-35, § 14, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.24. Additional standards for providers of temporary shelter and supportive housing.

In addition to the requirements in §§ 4-754.21, 4-754.22, and 4-754.23, providers of temporary shelter and supportive housing shall provide:

(1) Assessment by an appropriately trained, qualified, and supervised case manager in order to identify each client's service needs;

(2) Direct provision of, or referral to, appropriate supportive services to enable the client to fulfill the goals and requirements in the client's service plan;

(3) Mail and phone services, or procedures for handling mail and phone messages, that enable the client to receive mail and messages without identifying the client as residing in temporary shelter or supportive housing;

(4) Private, secure space for the temporary storage of personal belongings;

(5) Access to laundry facilities in the immediate vicinity of the shelter or supportive housing facility when all of the units are in one location;

(6) Reasonable access to phones during reasonable hours and during emergencies;

(7) The opportunity to establish a voluntary savings or escrow account; and

(8) In supportive housing and temporary shelters for families, access to immediate indoor or outdoor areas equipped with basic facilities for exercise and play for use by minor children.

(Oct. 22, 2005, D.C. Law 16-35, § 15, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.25. Additional standards for providers of transitional housing.

In addition to the requirements of §§ 4-754.21, 4-754.22, 4-754.23, and 4-754.24, all providers of transitional housing shall provide:

(1) Follow-up supportive services, for a minimum of 6 months, for clients who have transferred to permanent housing from their program, unless the client is receiving such supportive services from another provider;

(2) An apartment-style or group home housing accommodation; and

(3) Access to private space and personal time.

(Oct. 22, 2005, D.C. Law 16-35, § 16, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

PART D.

PROVIDER REQUIREMENTS.

§ 4-754.31. **Monitoring and inspections of services.**

(a) The Mayor shall monitor and evaluate the services delivered by all programs covered by § 4-754.01.

(b) The Mayor shall inspect the premises of all providers operating programs covered by § 4-754.01. Except for inspections of shelters monitored by the Office of Shelter Monitoring pursuant to § 4-754.52, inspections shall be conducted:

(1) At least once during each calendar year;

(2) Whenever the Mayor has reason to believe that a provider is not in compliance with the applicable standards established in this chapter or with other requirements or agreements; and

(3) In a reasonable manner and during the regular hours of operation of the provider.

(c) During any inspection conducted pursuant to subsection (b) of this section, the provider shall make available for examination any records or other materials related to the delivery of its services, including records relating to clients and to internal complaints, in accordance with the confidentiality requirements of § 4-754.11(7).

(d) The Mayor shall not delegate the responsibilities of this section to any agency or entity that serves as a provider of services covered by § 4-754.01.

(Oct. 22, 2005, D.C. Law 16-35, § 17, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(h), 54 DCR 1097.)

Effect of amendments. — D.C. Law 16-296, in subsec. (b), in the introductory paragraph, substituted “Except for inspections of shelters monitored by the Office of Shelter Monitoring pursuant to § 4-754.52, inspections shall be conducted” for “Inspections shall be conducted”.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

§ 4-754.32. **Provider Program Rules.**

(a) Pursuant to the limitations of subsections (b) and (c) of this section, providers may establish Program Rules related to the specific goals of their programs. The Program Rules shall include:

(1) Any applicable special eligibility requirements for the purpose of limiting entry into the program to individuals or families exhibiting the specific challenges that the program is designed to address, except in severe weather shelter and low barrier shelter;

(2) Rules regarding client responsibilities, including those listed in § 4-754.13;

(3) A list of client rights, including those listed in § 4-754.11, and where appropriate, § 4-754.12;

(4) A description of the internal complaint procedures established by the provider for the purpose of providing the client with an opportunity to promptly resolve complaints;

(5) A description of the procedures by which an individual with a disability may request a reasonable modification of policies or practices that have the effect of limiting the right to access services free from discrimination on the basis of disability as established by § 4-754.11(2).

(6) A description of the procedures and notice requirements of any internal mediation program established by the provider pursuant to § 4-754.39;

(7) A description of any schedule of sanctions that a provider may apply to clients who are in violation of the Program Rules, as authorized by §§ 4-754.34 through 4-754.38; and

(8) A description of a client's right to appeal any decision or action by the provider that adversely affects the client's receipt of services through fair hearing proceedings pursuant to § 4-754.41 and administrative review proceedings pursuant to § 4-754.42.

(b) Any Program Rules established by a provider shall be submitted to the Mayor for approval in accordance with the following requirements:

(1) Within 90 days of October 22, 2005;

(2) On a yearly basis thereafter, with any proposed changes clearly identified; and

(3) Whenever a provider seeks approval to change its eligibility criteria, the rules of its internal mediation program or complaint procedures, or its schedule of sanctions.

(c) No provider may enforce any provision within its Program Rules, other than those requirements or protections specifically enumerated by this chapter, unless:

(1) The Program Rules were in existence before October 22, 2005, and less than 180 days has passed since October 22, 2005; or

(2) The Mayor has approved the Program Rules pursuant to subsection (b) of this section.

(Oct. 22, 2005, D.C. Law 16-35, § 18, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.33. Notice of program rules.

(a)(1) All provider shall give prompt and effective notice of their Program Rules by:

(A) Posting a copy of their Program Rules on the provider's premises in a location easily accessible to clients and visitors; and

(B) Giving every new client written notice of the provider's Program Rules, and reading and explaining the written notice to the client.

(2) The client and the provider staff member delivering the notice pursuant to paragraph (1)(B) of this subsection shall both sign a statement

acknowledging the client's receipt of the notice and indicating the client's awareness, understanding, and acceptance of the Program Rules.

(b) All providers shall give to any client to whom they have denied services oral and written notice of the right to appeal the denial, including information about how to request a fair hearing pursuant to § 4-754.41 and administrative review pursuant to § 4-754.42.

(c) All providers shall give written and oral notice to clients of their transfer to another provider or of their suspension or termination from services at least 15 days prior to the effective date of the transfer, suspension, or termination, except:

(1) When the sanction results from the client's imminent threat to the health or safety of someone on the premises of the provider in accordance with § 4-754.38; or

(2) When the sanction is a suspension of supportive services for a period shorter than 10 days.

(d) Any notice issued pursuant to subsection (b) or (c) of this section must be mailed or served upon the client and shall include:

(1) A clear statement of the sanction or denial;

(2) A clear and detailed statement of the factual basis for the sanction or denial, including the date or dates on which the basis or bases for the sanction or denial occurred;

(3) A reference to the statute, regulation, policy, or Program Rule pursuant to which the sanction or denial is being implemented;

(4) A clear and complete statement of the client's right to appeal the sanction or denial through fair hearing proceedings pursuant to § 4-754.41 and administrative review proceedings pursuant to § 4-754.42, including the appropriate deadlines for instituting the appeal; and

(5) A statement of the client's right, if any, to continuation of benefits pending the outcome of any appeal, pursuant to § 4-754.11(18).

(e) Providers shall establish procedures to provide effective notice of rights, rules, sanctions, and denials to clients with special needs, including those who may be mentally impaired or mentally ill, or who may have difficulty reading or have limited English proficiency.

(Oct. 22, 2005, D.C. Law 16-35, § 19, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.34. Transfer of clients.

(a) A provider may transfer a client to another provider to ensure the client receives the most appropriate services available within the Continuum of Care whenever:

(1) The client consents to the transfer; or

(2) The provider identifies and secures for the client a placement with another provider that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's service plan.

(b) In addition to the circumstances under which a client may be transferred as described in subsection (a) of this section, a provider may transfer a client when a client fails or refuses to comply with the provider's Program Rules and the client responsibilities listed in § 4-754.13, or engages in any of the behaviors listed in § 4-754.36(2); provided, that:

(1) The client has received proper notice of the Program Rules, client responsibilities, and prohibited behaviors, as required by § 4-754.33; and

(2) The provider has made a good-faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without a transfer.

(c) Transfers of clients under this section can be made through direct arrangements with other providers within the Continuum of Care or through coordination with the central intake center established pursuant to § 4-753.02(c)(1). Such efforts shall be documented by the provider in the client's records.

(Oct. 22, 2005, D.C. Law 16-35, § 20, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.35. Suspension of services.

(a) If a client fails or refuses to comply with the provider's Program Rules and the client responsibilities listed in § 4-754.13, or engages in any of the behaviors listed in § 4-754.36(2), the provider may suspend services to the client for an appropriate period of time in light of the severity of the act or acts leading to the suspension, but in no case for any period longer than 30 days. The suspension may be implemented only when:

(1) The client has received proper notice of the Program Rules, client responsibilities, and prohibited behaviors, as required by § 4-754.33; and

(2) The provider has made a good-faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without suspension.

(b) Prior to suspension of services, the provider shall make a reasonable effort, given the severity of the situation, to transfer the client to another provider within the Continuum of Care, in accordance with § 4-754.34.

(c) A provider may not suspend adult individuals or adult family members in a manner that results in minor children or dependent adults being left unattended in a shelter or supportive housing unit.

(Oct. 22, 2005, D.C. Law 16-35, § 21, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.36. Termination of services.

A provider may terminate its delivery of services to a client only when:

(1) The provider documents that it has considered suspending the client

in accordance with § 4-754.35 or has made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with § 4-754.34;

(2) The client:

- (A) Possesses a weapon on the provider's premises;
- (B) Possesses or sells illegal drugs on the provider's premises;
- (C) Assaults or batters any person on the provider's premises;
- (D) Endangers the client's own safety or the safety of others on the provider's premises;

(E) Intentionally or maliciously vandalizes, destroys, or steals the property of any person on the provider's premises;

(F) Fails to accept an offer of appropriate permanent housing or supportive housing that better serves the client's needs after having been offered 2 appropriate permanent or supportive housing opportunities; or

(G) Knowingly engages in repeated violations of a provider's Program Rules; and

(3) In the case of terminations pursuant to subparagraphs (2)(F) and (2)(G) of this section, the provider has made reasonable efforts to help the client overcome obstacles to obtaining permanent housing.

(Oct. 22, 2005, D.C. Law 16-35, § 22, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.37. Alternative sanctions.

(a) A provider may employ lesser sanctions as alternatives to the transfer, suspension, or termination of services authorized in §§ 4-754.34 through 4-754.36.

(b) Any alternative sanction applied shall be authorized in the schedule of sanctions included in the provider's Program Rules and may include loss of special privileges and imposition of additional responsibilities.

(Oct. 22, 2005, D.C. Law 16-35, § 23, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.38. Emergency transfers of clients; emergency suspensions and terminations of services.

(a) Whenever a client presents an imminent threat to the health or safety of the client or any other person on a provider's premises, the provider, in light of the severity of the act or acts leading to the imminent threat, may immediately transfer, suspend, or terminate the client, without providing prior written notice of the transfer, suspension, or termination as required by § 4-754.33(c).

(b) The provider shall endeavor to provide written notice, consistent with the requirements of § 4-754.33(d), to any client transferred, suspended, or terminated pursuant to subsection (a) of this section at the time that the action

is taken. If it is not possible or safe to provide written notice at the time of the action, a subsequent written notice shall be provided to the client within 15 days, or, if the client's whereabouts are unknown, upon request within 90 days of the transfer, suspension, or termination. The time period during which the client may request fair hearing proceedings to appeal the transfer, suspension, or termination pursuant to § 4-754.41 shall not begin until the client has received the subsequent written notice.

(c) No client transferred, suspended, or terminated pursuant to subsection (a) of this section shall have the right to request mediation of the action from the provider pursuant to § 4-754.39 or to continue to receive shelter or supportive housing services without change pending appeal pursuant to § 4-754.11(18).

(d) Whenever a provider transfers, suspends, or terminates a client pursuant to subsection (a) of this section, the provider shall immediately notify the Department of the action. The notification shall include the following information:

(1) The identity of the client who was transferred, suspended, or terminated;

(2) The nature, date, and time of the action taken by the provider;

(3) The provider staff member authorizing the transfer, suspension, or termination; and

(4) The act or acts leading to the transfer, suspension, or termination.

(e) Whenever the Department receives a notification pursuant to subsection (d) of this section, the Department shall issue a written finding of whether the emergency transfer, suspension, or termination order complies with the requirements of this section. The notification shall be issued within 24 hours of receipt of the notification by the Department. If the Department finds that the order was improperly issued, the Department shall reinstate the client's access to the services received prior to the issuance of the order, pending the outcome of a hearing pursuant to §§ 4-754.41 and 4-754.42.

(Oct. 22, 2005, D.C. Law 16-35, § 24, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-754.39. Mediation.

(a) Providers are strongly encouraged to establish internal mediation programs to resolve disputes with clients.

(b) Any provider who chooses to establish an internal mediation program shall offer mediation services to any client of the provider, or the client's representative, who requests them.

(c) Upon receiving an oral or written request for mediation, the provider shall provide the client or the client's representative with reasonable written notice of:

(1) The time and place of any mediation proceedings; and

(2) The client's right to request a fair hearing for formal review of his or

her complaint pursuant to § 4-754.41 and his or her right to request administrative review pursuant to § 4-754.42.

(d) The provider shall allow the client or the client's representative to review its records of the client prior to the mediation proceeding.

(e) The provider shall allow the client to be accompanied by a legal or other representative of the client's choosing in any mediation proceedings.

(f) Upon conclusion of the mediation proceedings, the provider shall notify the client of his or her right to request a fair hearing pursuant to § 4-754.41, and the deadline for making such a request, if he or she is not satisfied with the outcome of the mediation.

(g) No member of the provider's staff who was involved in the incident or incidents at issue in the mediation shall serve as a mediator during the proceedings.

(Oct. 22, 2005, D.C. Law 16-35, § 25, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

PART E.

ADMINISTRATIVE HEARINGS AND REVIEW.

§ 4-754.41. Fair hearings.

(a) The Office of Administrative Hearings shall grant a fair hearing to any client or client representative who wishes to appeal a decision listed in subsection (b) of this section and who requests such a hearing, orally or in writing, within 90 days of receiving written notice of the adverse action. A request for a fair hearing shall be made to the client's provider, the Department, the Mayor, or the Mayor's designee. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearings.

(b) A client or client representative may request a fair hearing to:

(1) Appeal an administrative review decision made pursuant to § 4-754.42;

(2) Review any decision of a provider of services to:

(A) Transfer the client to another provider;

(B) Suspend provision of services to the client for a period longer than 10 days;

(C) Terminate services to the client; or

(D) Deny an application for services; or

(3) Obtain any legally available and practicable remedy for any alleged violation of:

(A) The provider standards listed in part C of this subchapter; or [§§ 4-754.21 through 4-754.25]; or

(B) The client rights listed in §§ 4-754.11 and 4-754.12, including the denial of a request by an individual with a disability for a reasonable accommodation or modification of policies or practices.

(c) The Mayor shall treat a fair hearing request made by a client representative in the same manner as it would be treated if it were made directly by the client; provided, that the Mayor subsequently receives written documentation authorizing the client representative to act on behalf of the client in accordance with the requirements of § 4-210.05.

(d) In accordance with § 4-754.11(18), any client who requests a fair hearing within 15 days of receipt of written notice of a suspension or termination of shelter or supportive housing shall continue to receive shelter or supportive housing pending a final decision from the fair hearing proceedings. This right to continuation of shelter or supportive housing pending appeal shall not apply in the case of an emergency suspension or termination pursuant to § 4-754.38.

(e) Upon receipt of a fair hearing request, the Mayor or the Mayor's designee shall offer the client or client representative an opportunity for an administrative review by the Department of the decision that is the subject of the fair hearing request.

(f) All fair hearings shall be conducted in the following manner:

(1) In accordance with the requirements for the review of contested cases as provided in Chapter 5 of Title 2;

(2) In accordance with Chapter 18A of Title 2 [§ 2-1831.01 et seq.]; and

(3) In accordance with the following additional requirements:

(A) The hearing shall be held within a reasonably short time following the request, such time not to exceed 15 days following the initial request for hearing;

(B) If a party fails to appear, the Administrative Law Judge designated to conduct the hearing may enter a default decision in favor of the party present. The default may be set aside only for good cause shown, and upon equitable terms and conditions; and

(C) The Administrative Law Judge shall issue a final decision within 15 days of the completion of the hearing.

(g) Materials and documents filed with the Office of Administrative Hearings during fair hearing proceedings shall be maintained in compliance with § 2-1831.13(d), the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936), and any other District or federal law pertaining to confidentiality of records.

(h) The Mayor or the Mayor's designee shall maintain a file of final fair hearing and administrative review decisions, indexed by issue, with identifying information redacted. The file shall be accessible to clients, their representatives, and other persons upon request to the Mayor or the Mayor's designee.

(Oct. 22, 2005, D.C. Law 16-35, § 26, 52 DCR 8113; Apr. 8, 2011, D.C. Law 18-367, § 2(e), 58 DCR 987.)

Effect of amendments. — D.C. Law 18-367 rewrites subsec. (b)(2), which had read as follows: “(2) Review any decision of a provider of services, other than shelter or supportive hous-

ing, to: (A) Transfer the client to another provider; (B) Suspend provision for a period longer than 10 days; or (C) Terminate services to the client; or”.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 18-367. — For history of Law 18-367, see notes under § 4-751.01.

§ 4-754.42. Administrative review.

(a) The purpose of the administrative review shall be to enable the Department to ascertain the legal validity of the decision that is the subject of the fair hearing request, and, if possible, achieve an informal resolution of the appeal.

(b) Any administrative review conducted pursuant to subsection (a) of this section shall be completed within 15 days of the receipt of the administrative review request, except upon showing of good cause as to why such deadline cannot be met. If good cause is shown, a decision shall be rendered as soon as possible thereafter. If an extension of time for review is required for good cause, written notice of the extension shall be provided to the client or client representative prior to the commencement of the extension.

(c) An administrative review shall be completed before the Office of Administrative Hearings shall grant a fair hearing to any client or client representative; except, that the Office of Administrative Hearings may grant a hearing prior to the completion of the administrative review, on proper notice to all parties, to decide if a notice required by § 4-754.33(b) or (c) (other than a notice of an emergency action) has not been given or is invalid on its face.

(d) All administrative reviews shall be conducted in the following manner:

(1) In accordance with the administrative review procedures described in § 4-210.07; and

(2) In accordance with the following additional requirements:

(A) The client or client representative shall have the right to submit issues and comments in writing to the Department; and

(B) The client or the client representative shall have the right to review provider’s records regarding the client, or the records of other related service providers regarding the client, prior to the administrative review proceeding;

(C) The administrative review shall be conducted by an employee of the Department;

(D) The administrative review decision shall be issued in writing, in a manner readily understood by the client, and shall include:

(i) A clear and detailed statement of the factual basis supporting the administrative review decision;

(ii) A clear and detailed statement of the actions proposed to be implemented, including any sanctions, probationary periods, or any denial, transfer, suspension, or termination of services to be imposed;

(iii) A reference to the statute, regulation, Program Rule, or policy pursuant to which the administrative review decision is made;

(iv) Notice that the client’s request for a hearing shall be considered formally withdrawn upon submission of a signed statement confirming such withdrawal; and

(v) A statement that if the client is not satisfied with the administrative review decision, the fair hearing shall be held.

(Oct. 22, 2005, D.C. Law 16-35, § 27, 52 DCR 8113; Apr. 8, 2011, D.C. Law 18-367, § 2(f), 58 DCR 987.)

Effect of amendments. — D.C. Law 18-367 rewrote subsec. (c), which had read as follows: “(c) An administrative review must be completed before the Office of Administrative Hearings shall grant a fair hearing to any client or client representative.”

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Legislative history of Law 18-367. — For history of Law 18-367, see notes under § 4-751.01.

PART F.

SHELTER MONITORING.

§ 4-754.51. Establishment of Office of Shelter Monitoring.

There is established within the Department of Human Services an Office of Shelter Monitoring to monitor shelters and services provided by the District and its contractors to clients who are homeless.

(Oct. 22, 2005, D.C. Law 16-35, § 27a, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — Law 16-296, the “Shelter Monitoring and Emergency Assistance Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-625, which was referred to Committee on Human Services. The Bill was adopted on first

and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-655 and transmitted to both Houses of Congress for its review. D.C. Law 16-296 became effective on March 14, 2007.

§ 4-754.52. Powers and duties of the Office.

(a) The Office shall monitor the conditions, services, and practices at shelters, evaluating the following, to the extent applicable:

- (1) Health, safety, and cleanliness of shelters;
- (2) Policies, practices, and program rules;
- (3) Accessibility of shelters to clients with disabilities;
- (4) Appropriateness of shelters for families;
- (5) Respect for client rights established by §§ 4-754.11 and 4-754.12;
- (6) Compliance with provider standards established by §§ 4-754.21 through 4-754.25;
- (7) Comments of shelter clients and program staff;
- (8) Ability of the program to facilitate transition from homelessness to permanent housing; and
- (9) Any other information deemed appropriate.

(b) The Office shall conduct inspections on the premises of each shelter covered by § 4-754.01.

(c) The Office shall receive complaints about programs, facilities, and services provided within the continuum of care and shall investigate programs not in compliance with the applicable standards established in this act or with other requirements or agreements.

(d) The Office shall establish procedures for notifying providers of deficiencies and procedures for correcting those deficiencies in a timely manner.

(e) During any inspection or investigation conducted pursuant to this section, the provider shall make available to the Office for examination any records or other materials related to the delivery of its services, including records related to clients and to internal complaints, in accordance with the confidentiality requirements of § 4-754.11(7).

(f) The Office shall ensure confidential treatment of the personal, social, legal, financial, educational, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, consistent with confidentiality requirements of District and federal law. The Office shall not disclose the identity of any person who brings a complaint or provides information to the Office without the person's consent, unless the Office determines that disclosure is unavoidable or necessary to further the ends of an inspection or investigation.

(g) The Office shall encourage appropriate use of mediation, fair hearing, and administrative review processes for resolving grievances, pursuant to §§ 4-754.39, 4-754.41, and 4-754.42.

(h) The Office shall post in prominent places at each program and shelter site its contact information, its procedures for accepting complaints, and procedures for requesting mediation, a fair hearing, or administrative review of grievances.

(Oct. 22, 2005, D.C. Law 16-35, § 27b, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-754.51.

§ 4-754.53. Shelter monitoring reports.

(a) The Office shall issue reports summarizing the findings of each inspection or investigation it conducts.

(b) The Office shall make available, upon request, each report issued pursuant to subsection (a) of this section to the provider, the Mayor, and all members of the Interagency Council. Upon request, the Office shall deliver an appropriate number of copies of the final report to the shelter for distribution to clients.

(c) The Office, in coordination with the Interagency Council, shall issue the general findings of its monitoring efforts as a section of the annual report required under § 4-752.02(5).

(Oct. 22, 2005, D.C. Law 16-35, § 27c, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-754.51.

§ 4-754.54. Shelter monitoring staff.

(a) Employees of the Office shall agree in writing to comply with all applicable confidentiality requirements in accordance with their official duties.

(b) The Office shall train its employees, as appropriate, in compliance with applicable confidentiality restrictions, in homeless shelter program evaluation, and in sensitivity to the diversity of persons who are homeless in the District.

(c) The Office shall endeavor to hire staff who reflect the diversity of people accessing shelter in the District, including with respect to disability status, language, and experience being homeless.

(Oct. 22, 2005, D.C. Law 16-35, § 27d, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-754.51.

§ 4-754.55. Retaliation prohibited.

No person shall retaliate against a person who brings a complaint or provides information to the Office relevant to the performance of its duties. The Office shall report any violation of this section to the Interagency Council and the Office of the Inspector General.

(Oct. 22, 2005, D.C. Law 16-35, § 27e, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-754.51.

§ 4-754.56. Policies and procedures.

The Mayor, pursuant to § 4-756.02 and in consultation with the Interagency Council, shall set forth the policies and procedures for inspections, procedures for identifying and curing deficiencies, and procedures for taking enforcement actions against providers in violation of the standards of this chapter. The policies and procedures may include criteria for the provision of performance-based bonuses or penalties for providers.

(Oct. 22, 2005, D.C. Law 16-35, § 27f, as added Mar. 14, 2007, D.C. Law 16-296, § 2(i), 54 DCR 1097.)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-754.51.

*Subchapter V. No Entitlement; Limited Use of Funds.***§ 4-755.01. No entitlement to services.**

(a) No provision of this chapter shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any services

within the Continuum of Care, other than shelter in severe weather conditions as authorized by § 4-754.11(5).

(b) No provision of this chapter shall be construed to require the District to expend funds for individuals or families who are eligible for services within the Continuum of Care, beyond the level of the District's annual appropriation for services within the Continuum of Care.

(Oct. 22, 2005, D.C. Law 16-35, § 28, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-755.02. Limitation on use of District monies.

(a) No public funds shall be used for payment of goods or services from any vendor or organization that engages in discriminatory practices.

(b) No District funds shall be used to support the delivery of services that are not authorized by this chapter or by rules issued pursuant to this chapter.

(c) All District funds appropriated to fund or support services within the Continuum of Care shall be used in accordance with District contract and procurement regulations and District grant regulations.

(d) After the fiscal year ending September 30, 2007, the District may not enter into agreements with third parties to execute its shelter monitoring duties set forth in this chapter.

(Oct. 22, 2005, D.C. Law 16-35, § 29, 52 DCR 8113; Mar. 14, 2007, D.C. Law 16-296, § 2(j), 54 DCR 1097.)

Effect of amendments. — D.C. Law 16-296, added subsec. (d)

Legislative history of Law 16-296. — For Law 16-296, see notes following § 4-751.01.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

Subchapter VI. Additional Mayoral Authority.

§ 4-756.01. Contracting authority.

(a) The Mayor may execute contracts, grants, and agreements as necessary to implement the provisions of this chapter.

(b) Pursuant to §§ 6-203(17) and 6-225, the Mayor, or his designee, shall have the authority to enter into an agreement with the District of Columbia Housing Authority to allocate available unexpended funds to meet the purposes of this chapter and §§ 6-226 and 6-227.

(c) Contracted case-management services authorized pursuant to the Housing First program shall include contracted case-management services to assist homeless women and working adults residing at the Federal City Shelter.

(Oct. 22, 2005, D.C. Law 16-35, § 30, 52 DCR 8113; Aug. 16, 2008, D.C. Law 17-219, § 5004(c), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219 designated subsec. (a) and added subsecs. (b) and (c). **Legislative history of Law 17-219.** — For Law 17-219, see notes following § 4-126.

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01.

§ 4-756.02. Rulemaking authority.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Oct. 22, 2005, D.C. Law 16-35, § 31, 52 DCR 8113.)

Legislative history of Law 16-35. — For Law 16-35, see notes following § 4-751.01. **Homeless Services Reform Act of 2005,** see Mayor's Order 2006-20, February 13, 2006 (53 DCR 2721).

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 16-35, the

CHAPTER 8. MEDICAID PROVIDER FRAUD PREVENTION.

Sec.

4-801. Definitions.

4-802. Penalties; prohibited acts.

4-803. Additional civil penalties; appeals; testimony inadmissible.

4-804. Prosecutions; investigations; subpoe-

Sec.

nas; witness fees; perjury; compulsion of obedience to subpoena; oaths; access to records.

4-805. Rules.

§ 4-801. Definitions.

For the purposes of this chapter, the term:

(1) "Benefit" means any benefit authorized under the District of Columbia Medicaid Program.

(2) "Claim," "request for payment," or "claim for payment" means an application or communication, whether written, oral, electronic impulse, or magnetic tape, which is submitted by a person to the Department of Health of the District of Columbia for payment and which is used to identify any item or service for which payment may be made under the District of Columbia Medicaid Program.

(3) "Conditions of participation" means those items set forth in the provider agreement with the District of Columbia which a provider has agreed to meet in providing items or services under the District of Columbia Medicaid Program.

(4) "Department" means the Department of Health of the District of Columbia or its agent.

(5) "Director" means the Director of the Department of Health.

(6) "Item or service" means:

(A) Any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for program payment or a request for payment; and

(B) In the case of a claim based on costs, any entry or omission in a cost report, books of accounts, or other documents supporting the claim.

(7) "Medicaid legislation" means title 19 of the Social Security Act (42 U.S.C. § 1396 et seq.).

(8) "Medicaid program" means the program authorized by title 19 of the Social Security Act and by § 1-307.02, and administered by the Department of Health.

(9) "Payment" means any payment made by the District of Columbia to a provider for any item or service under the District of Columbia Medicaid Program.

(10) "Person" means an individual, firm, partnership, group, corporation, professional corporation or association, institution, agency, or other entity, public or private, that has been approved or seeks to be approved by the District of Columbia to provide medical assistance to recipients.

(11) "Provider agreement" means a contract executed by the District of Columbia and a provider pursuant to title 19 of the Social Security Act and which contract sets forth the rights, duties, and obligations of the parties.

(12) "Provider" means an individual or entity furnishing services under a provider agreement.

(13) "Recipient" means any individual who has been designated as eligible to receive or who receives any item or service under the District of Columbia Medicaid Program.

(14) "Record" means any medical, professional, or business record relating to the care or treatment of a recipient which is maintained or required to be maintained by a provider.

(15) "Sign" means to affix a signature, directly or indirectly, by means of a handwriting, typewriter, signature stamp, computer impulse, or any other means.

(Mar. 16, 1985, D.C. Law 5-193, § 2, 32 DCR 1010; Mar. 6, 2002, D.C. Law 14-77, § 2(a), 49 DCR 11260.)

Prior Codifications. — 1981 Ed., § 3-701.

Effect of amendments. — D.C. Law 14-77, in pars. (2), (4), (5), and (8), substituted "Department of Health" for "Department of Human Services".

Temporary Amendment of Section. — For temporary (225 day) compliance of the District of Columbia Medicaid program with the new federal requirements, see §§ 2-4 of Medicaid Benefits Protection Temporary Act of 1994 (D.C. Law 10-131, June 24, 1998, law notification 41 DCR 4631).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Medicaid Provider Fraud Prevention Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-244, January 28, 2002, 49 DCR 1034).

Legislative history of Law 5-193. — Law 5-193, the "Medicaid Provider Fraud Prevention Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-511, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18,

1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-258 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-77. — Law 14-77, the "Medicaid Provider Fraud Prevention Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-197 and transmitted to both Houses of Congress for its review. D.C. Law 14-77 became effective on March 6, 2002.

Delegation of Authority. — Delegation of authority pursuant to Law 5-193, see Mayor's Order 86-49, March 31, 1986.

Editor's notes. — As enacted by D.C. Law 5-193, § 2, this section contained the subsection designation "(a)." As this material contained no other subsection designations, the designation "(a)" has been deleted for stylistic consistency.

§ 4-802. Penalties; prohibited acts.

(a) A person shall be guilty of a misdemeanor punishable by a fine of not more than \$500 or imprisonment not to exceed 1 year, or both, for each violation of the following prohibitions in this section.

(b) No one may, with intent to defraud, by means of a false claim, false statement, failure to disclose information, or other fraudulent scheme or device, obtain or attempt to obtain:

(1) Authorization to become or remain a provider;

(2) A higher rate of payment than that to which the person is entitled as a provider;

(3) Payment, as a provider, for items or services that the person knows or has reason to know were not provided as claimed;

(4) Payment which may not be made under the program under which the claim was made; or

(5) Payment submitted in violation of an agreement between the person and the District of Columbia.

(c) No one may solicit, accept, or agree to accept any type of remuneration for the following:

(1) Referring a recipient to a particular provider of any item or service or for which payment may be made under the District of Columbia Medicaid Program; or

(2) Recommending the purchase, lease, or order of any good, facility, service, or item for which payment may be made under the District of Columbia Medicaid Program.

(d) No one may confer, offer, or agree to confer or offer any type of remuneration for the conduct described in subsection (c) of this section.

(e) No one may charge, solicit, accept, or attempt to charge, solicit, accept or receive anything of value from a recipient or provider in addition to the amount of money payable under the District of Columbia Medicaid Program.

(f) No one may solicit, receive, or attempt to solicit or receive anything of value as a precondition for admitting a recipient to a hospital, skilled nursing facility, intermediate care facility, or any other facility, or as a condition for providing any item or service to a recipient.

(Mar. 16, 1985, D.C. Law 5-193, § 3, 32 DCR 1010.)

Cross references. — False statements, see § 22-2405.
 Fraud, see § 22-3221.
 Theft, see § 22-3211.

Prior Codifications. — 1981 Ed., § 3-702.
Legislative history of Law 5-193. — For legislative history of D.C. Law 5-193, see Historical and Statutory Notes following § 4-801.

§ 4-803. Additional civil penalties; appeals; testimony inadmissible.

(a) Any person that presents or causes to be presented to an officer, employee, or agent of the District of Columbia a claim under the Medicaid program that is for a medical or other item or service that the person knows or has reason to know was not provided as claimed, or that requests a payment which may not be made under the program under which the claim was made, or is submitted in violation of an agreement between the person and the District of Columbia, shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for each item or service. In addition, the person shall be subject to an assessment of not more than twice the amount claimed for each item or service in place of the damages sustained by the District of Columbia because of the claim.

(b)(1) The Director may initiate a proceeding to determine whether to impose a civil money penalty or assessment under subsection (a) of this section, but only as authorized by the Corporation Counsel pursuant to procedures agreed upon by them.

(2) The Director shall not make a determination adverse to any person under subsection (a) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after

a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(c) In determining the amount or scope of any penalty or assessment imposed pursuant to subsection (a) of this section, the Director shall take into account the following:

(1) The nature of claims and the circumstances under which they were presented;

(2) The degree of culpability, history of prior offenses, and financial condition of the person presenting the claims; and

(3) Other matters as justice may require.

(d) Any person adversely affected by a determination under this section may obtain a review of the determination in the Court of Appeals of the District of Columbia in accordance with § 2-510.

(e) Civil money penalties and assessments imposed under this section may be recovered in a civil action in the name of the District of Columbia by the Corporation Counsel. Amounts recovered under this section shall be paid to the District of Columbia Treasurer and allocated, first, to reimburse the Medicaid program and, then, to the General Fund of the District of Columbia. The amount of the penalty or assessment, when finally determined, may be deducted from any sum then or later owing by the District of Columbia to the person against whom the penalty or assessment has been charged.

(f) A determination by the Director to impose a penalty or assessment under subsection (a) of this section shall be final unless timely appealed pursuant to subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Director or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action brought by the District of Columbia.

(g) Whenever the Director's determination to impose a penalty or assessment under subsection (a) of this section becomes final, the Director shall notify the appropriate licensing agency or organization that the penalty or assessment has become final and also about the reasons for the penalty or assessment.

(h) Testimony in any civil proceeding pursuant to this chapter and the fruits of that testimony shall be inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement.

(Mar. 16, 1985, D.C. Law 5-193, § 4, 32 DCR 1010.)

Cross references. — False statements, see § 22-2405.

Perjury, see § 22-2402.

Prior Codifications. — 1981 Ed., § 3-703.

Legislative history of Law 5-193. — For legislative history of D.C. Law 5-193, see Historical and Statutory Notes following § 4-801.

§ 4-804. Prosecutions; investigations; subpoenas; witness fees; perjury; compulsion of obedience to subpoena; oaths; access to records.

(a) Criminal prosecutions under § 4-802 may be brought in the Superior Court of the District of Columbia by the Corporation Counsel or the Office of

the Inspector General. Civil actions under § 4-803(e) may be brought in the Superior Court of the District of Columbia by the Corporation Counsel.

(b) In addition to any power to bring criminal or civil actions or otherwise carry out the duties under this chapter, the Corporation Counsel or the Office of the Inspector General shall have the authority to investigate all alleged violations of this chapter and, in exercising this power, may issue subpoenas for witnesses to appear and testify or to produce all books, records, papers, or documents in any investigation into alleged violations of this chapter.

(c) Witnesses, other than those employed by the District of Columbia, summoned under subsection (b) of this section shall be paid the same fees and mileage that witnesses are paid in the Superior Court of the District of Columbia, but the fees need not be tendered to the witnesses before they appear and testify or produce books, records, papers, or documents.

(d) Any willful false swearing on the part of any witness testifying about a material fact pursuant to a subpoena issued under subsection (b) of this section shall be subject to prosecution pursuant to § 22-2402.

(e) If any witness having been personally summoned shall neglect or refuse to obey the subpoena, the Corporation Counsel or the Office of the Inspector General may report that fact to the Superior Court of the District of Columbia. The Superior Court of the District of Columbia may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that court.

(f) The Corporation Counsel or the Office of the Inspector General may administer oaths to witnesses summoned in any investigation under subsection (b) of this section.

(g) No person holding records required to be maintained by the Medicaid legislation or regulations promulgated pursuant to that legislation may refuse to provide the Corporation Counsel or the Office of the Inspector General with access to the records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right.

(Mar. 16, 1985, D.C. Law 5-193, § 5, 32 DCR 1010; Mar. 6, 2002, D.C. Law 14-77, § 2(b), 49 DCR 11260.)

Cross references. — Criminal procedure, conduct of prosecutions, see § 23-101.

Prior Codifications. — 1981 Ed., § 3-704.

Effect of amendments. — D.C. Law 14-77 rewrote subsec. (a); and, in subsecs. (b), (e), (f), and (g) inserted "or the Office of the Inspector General" following "the Corporation Counsel". Prior to amendment, subsec. (a) read as follows: "(a) Criminal prosecutions under § 4-802 and civil actions brought under § 4-803(e) shall be brought in the Superior Court of the District of Columbia by the Corporation Counsel."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Medicaid Provider Fraud Prevention

Temporary Amendment Act of 2001 (D.C. Law 14-3, June 13, 2001, law notification 48 DCR 3331).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Medicaid Provider Fraud Prevention Emergency Amendment Act of 2001 (D.C. Act 14-16, March 16, 2001, 48 DCR 2685).

For temporary (90 day) amendment of section, see § 2 of Medicaid Provider Fraud Prevention Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-61, June 6, 2001, 48 DCR 5706).

For temporary (90 day) amendment of section, see § 2(b) of Medicaid Provider Fraud

Prevention Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-244, January 28, 2002, 49 DCR 1034).

Legislative history of Law 5-193. — For

legislative history of D.C. Law 5-193, see Historical and Statutory Notes following § 4-801.

Legislative history of Law 14-77. — For Law 14-77, see notes following § 4-801.

§ 4-805. Rules.

The Mayor shall issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 5 of Title 2.

(Mar. 16, 1985, D.C. Law 5-193, § 6, 32 DCR 1010.)

Prior Codifications. — 1981 Ed., § 3-705.

Legislative history of Law 5-193. — For

legislative history of D.C. Law 5-193, see Historical and Statutory Notes following § 4-801.

CHAPTER 9. EMPLOYEES' CHILD CARE FACILITIES.

Sec. 4-901. Necessity of employees' child care facilities.	Sec. 4-904. Management of areas designated for facilities.
4-902. Child Care Bureau established; organization; duties of executive director.	4-905. Periodic reassessment of need for facility; closing facility and relocation of children.
4-903. Requisites for space set aside in government buildings.	

§ 4-901. Necessity of employees' child care facilities.

The Council of the District of Columbia ("Council") finds that:

- (1) The District of Columbia has more than 25,000 pre-schoolers and 45,000 school-aged children in need of child care services.
- (2) Fifty-eight percent of the mothers with children under the age of 3 in the District of Columbia are employed.
- (3) Sixty-three percent of the mothers with children 3 to 5 years of age in the District of Columbia are employed.
- (4) During the period 1970 and 1980 the percentage of mothers with young children in the labor force rose, resulting in a greater proportion of pre-school children requiring child care services.
- (5) Eighty percent of women in the work force are of childbearing age, and 93% of them are expected to become pregnant at some point in their careers.
- (6) There is a substantial need to provide adequate child care facilities for District of Columbia ("District") government employees that are low cost, safe, and convenient to the job site.
- (7) District agencies will experience increased productivity and morale, as well as lower absenteeism and turnover rates, by its staff by strategically placing child care facilities in the buildings where the parents work.
- (8) Recruitment efforts will attract quality personnel because the provision of child care services is an incentive for reliable and responsible family members.

(Feb. 24, 1987, D.C. Law 6-169, § 2, 33 DCR 7028.)

Prior Codifications. — 1981 Ed., § 3-901.
Legislative history of Law 6-169. — Law 6-169, the "District of Columbia Employees Child Care Facilities Act of 1986," was introduced in Council and assigned Bill No. 6-429, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 23, 1986, and October 7, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-218 and transmitted to both Houses of Congress for its review.

§ 4-902. Child Care Bureau established; organization; duties of executive director.

(a) There is established within the District government a Child Care Bureau ("Bureau"). The Bureau shall provide the District government a single administrative unit, responsible to the Mayor, to implement the provisions of this chapter and other programs that may be delegated to it by the Mayor of the District of Columbia ("Mayor") to promote child care.

(b) The Bureau shall be headed by an executive director, who shall be appointed by the Mayor within 90 days after February 24, 1987. The executive director shall devote full time to the duties of the office. In addition, there shall be made available to the executive director out of the budget for the fiscal year ending September 30, 1987, resources for staff necessary to carry out the provisions of this chapter. For subsequent fiscal years, the Mayor shall propose a budget adequate for the operation of the Bureau.

(c) In order to carry out the purposes of this chapter, the executive director shall, among other duties:

- (1) Serve as an advocate for child care in the District of Columbia;
- (2) Develop recommendations for a central child care policy and a comprehensive plan for addressing child care needs in the District;
- (3) Provide an ongoing mechanism to increase the coordination and the sharing of information among the various agencies currently sharing responsibilities for child care, as well as the various commissions and advisory boards involved in the delivery of child care services;
- (4) Develop an analysis and forecast of child care needs in the District government;
- (5) Identify areas of need for service or improvement of service and bring them to the attention of the Mayor, with suggestions for meeting these needs, including conducting or funding research and demonstration projects to test the suggestions;
- (6) Provide information and technical assistance with respect to programs and services for child care to the Mayor, other District government agencies and departments, and the community including, when necessary, contracting for consultant assistance outside the District government;
- (7) Evaluate present laws, regulations, procedures, and existing public and private programs, their capacities and program models, and make recommendations to the Mayor for improvement;
- (8) Review and comment on proposed District and federal legislation, regulations, policies, and programs, and make policy recommendations on health, safety, and quality issues as they relate to child care;
- (9) File with the Mayor and with the Council an annual report on the operation of the Bureau to include information developed pursuant to paragraphs (5), (6), and (7) of this subsection, as well as an analysis of child care needs, and make it available to the public;
- (10) Publish a directory to be revised at least every 2 years, of child care services available to District residents through the District government, including, to the maximum extent possible, sources of nonpublic assistance and programs for child care in the District; and
- (11) Assure necessary control, evaluation, audit, and reporting on programs funded through the Bureau.

(Feb. 24, 1987, D.C. Law 6-169, § 3, 33 DCR 7028.)

Prior Codifications. — 1981 Ed., § 3-902.
Legislative history of Law 6-169. — For legislative history of D.C. Law 6-169, see Historical and Statutory Notes following § 4-901.

Delegation of Authority. — Delegation of authority pursuant to Law 6-169, see Mayor's Order 87-139, June 16, 1987.

§ 4-903. Requisites for space set aside in government buildings.

(a) The District government shall set aside adequate space within government-occupied buildings to meet the child care needs of its employees whenever:

(1)(A) The government constructs, leases, or receives as a gift any office building that will be used to accommodate 100 or more District government employees; or

(B) The government makes additions, alterations, or repairs to existing District government-owned or -occupied office buildings that change the use of 25% of the net square foot area of the building and include the addition to, alteration of, or repair to the 1st floor in order to accommodate 100 or more District government employees; and

(2) A review of future employee occupancy shows sufficient need for child care services for 20 or more children.

(b) The Director of the Department of Administrative Services may secure space for child care outside any building described in subsection (a) of this section only in the event that all other physical requirements controlling the development of the child care facilities within the office building cannot be utilized, and only if funds for the offsite child care facilities are made available.

(c) Office space occupied by the District government on February 24, 1987, may be renovated to accommodate a child care facility subject to the availability of funds and the direction of the Director of the Department of Administrative Services.

(d) Space designated within a District office building for a child care facility shall comply with all other provisions of District law.

(e) The interior area of child care space shall not exceed 2,000 feet, or be less than that required to accommodate 20 children, excluding space for restrooms, kitchen facilities, storage areas, and teacher offices.

(f) This chapter shall not be construed to apply to those buildings that provide care or 24-hour residential care for patients, inmates, or wards of the District, such as hospitals and correctional facilities.

(g) The Department of Administrative Services shall conduct an inventory of the current space and space requirements of the District government office space that could be utilized for child care programs as provided for in subsection (a) of this section. The inventory shall be completed within 90 days of February 24, 1987.

(Feb. 24, 1987, D.C. Law 6-169, § 4, 33 DCR 7028.)

Prior Codifications. — 1981 Ed., § 3-903. legislative history of D.C. Law 6-169, see Historical and Statutory Notes following § 4-901.
Legislative history of Law 6-169. — For

§ 4-904. Management of areas designated for facilities.

(a) Utilization of the space described in § 4-903 for child care shall be subject to terms and conditions set forth by the Director of the Department of Administrative Services. The terms shall include payment of rent, proof of

financial responsibility, and maintenance of space. The District government shall not be liable for negligent acts or acts of omission on the part of the child care facility operator, or its employees.

(b) Space for child care facilities shall first be made available to employees who wish to establish nonprofit child care facilities at a rate to be established by the Director of the Department of Administrative Services, based upon the actual cost to the District, or the average cost of District-controlled office space, whichever is less.

(c) Space for child care facilities may be made available to private organizations that wish to establish child care facilities in District government buildings.

(d) Rates for the rental of space in District buildings to be made available for child care facilities shall be established by the Director of the Department of Administrative Services, who shall attempt to keep these costs as low as possible so that fees paid by employees for child care services will not be substantially impacted by high overhead costs.

(e) Contracts with private organizations to provide child care services shall be competitively bid and awarded, and may include factors in addition to price, such as the provision of early childhood education programs, infant care, and other developmental models.

(f) The department or departments occupying any building shall notify the employee-occupants of the availability of space to be used for child care facilities no earlier than 180 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs that both change the use of 25% of the net square foot area of the building and include the addition to, alteration of, or repair of the 1st floor.

(g)(1) The space may be used for other purposes, as long as no permanent alteration of space occurs, if within 30 days after full occupancy of a new office building, or 30 days after completion of additions, alterations, or repairs to an existing District government building, the employee-occupants:

(A) Have not requested a child care needs review by the Bureau;

(B) Have not filed an application to be chartered as a nonprofit corporation for the purpose of organizing a child care facility;

(C) Have not deposited 2 months' rent in a commercial bank or savings account; or

(D) Have not entered into a contract with the Department of Administrative Services.

(2) Other purposes may include, but are not limited to, conference rooms, storage rooms, or offices.

(h) The space may be reconverted for child care purposes within 180 days of the notice, if, at a later date, the employee-occupants:

(1) File an application to be chartered as a non-profit corporation for the purpose of organizing a child care facility;

(2) Deposit 2 months' rent in a commercial bank or savings account; and

(3) Notify the Director of the Department of Administrative Services of those actions.

(i) Within 120 days of February 24, 1987, the Mayor shall promulgate proposed rules governing the operation of child care facilities in District

government buildings. The proposed rules shall be submitted to the Council for approval, in whole or in part, by resolution.

(Feb. 24, 1987, D.C. Law 6-169, § 5, 33 DCR 7028.)

Prior Codifications. — 1981 Ed., § 3-904.

Legislative history of Law 6-169. — For legislative history of D.C. Law 6-169, see Historical and Statutory Notes following § 4-901.

Delegation of Authority. — Delegation of authority pursuant to Law 6-169, see Mayor's Order 87-139, June 16, 1987.

§ 4-905. Periodic reassessment of need for facility; closing facility and relocation of children.

(a) When a child care facility has been continuously operating for 4 years, the executive director of the Bureau shall assess the child care needs of District employees using the facility and the office space needs of the building within which the facility is located. If the assessment demonstrates a greater need for office space than for child care, the Director of the Department of Administrative Services may close the child care facility after 90 days written notice of the closure is given to the director or head teacher of the facility.

(b) All children registered in a child care facility closed pursuant to subsection (a) of this section may be given relocation assistance into other child care facilities.

(Feb. 24, 1987, D.C. Law 6-169, § 6, 33 DCR 7028; May 10, 1989, D.C. Law 7-231, § 14, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 3-905.

Legislative history of Law 6-169. — For legislative history of D.C. Law 6-169, see Historical and Statutory Notes following § 4-901.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill

No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

CHAPTER 10. BURIAL ASSISTANCE PROGRAM.

Sec.

4-1001. Burial assistance program.

§ 4-1001. Burial assistance program.

(a) Emergency assistance up to a maximum of \$800 is available for burial and cremation services if the liquid assets of the deceased person at the time of death do not exceed \$800.

(b) Burial assistance shall be subject to the availability of appropriations. Notwithstanding any other provision of law, nothing in this subchapter shall be construed to create an entitlement to burial assistance for any person.

(c) The Mayor shall implement this subchapter within 30 days of the effective date of this subchapter [April 12, 2000], and shall make quarterly reports to the Council Committee on Human Services on the assistance granted under this program.

(d) Subsections (a) and (b) shall apply as of April 20, 1999.

(Oct. 20, 1999, D.C. Law 13-38, § 1802; Apr. 12, 2000, D.C. Law 13-91, § 166, 32 DCR 764.)

Temporary Amendment of Section. — For temporary (225 day) amendment of §§ 1801 and 1802 of the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999, see § 2 of Burial Assistance Program Reestablishment Temporary Amendment Act of 1999 (D.C. Law 13-76, April 5, 2000, law notification 47 DCR 2633).

Emergency legislation. — For temporary (90-day) addition of section, see § 2 of the Burial Assistance Program Reestablishment Emergency Amendment Act of 1999 (D.C. Act 13-180, November 2, 1999, 46 DCR 9740).

For temporary (90-day) amendment of section, see § 2 of the Burial Assistance Program Reestablishment Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-263, February 9, 2000, 47 DCR 1195).

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Delegation of Authority. — Delegation of authority pursuant to D.C. Act 13-180, the “Burial Assistance Program Re-Establishment Emergency Amendment Act of 1999”, see Mayor’s Order 2000-13, January 21, 2000 (47 DCR 1025).

CHAPTER 11. D.C. GENERAL HOSPITAL HOSPICE PROGRAM.

Sec.

4-1101. Definition.

4-1102. D.C. General Hospital Hospice Program; established.

Sec.

4-1103. Appropriations.

4-1104. Rules.

4-1105. Report.

§ 4-1101. Definition.

For the purposes of this chapter, the term “terminal condition” means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death within 6 months or less.

(Mar. 16, 1989, D.C. Law 7-210, § 2, 36 DCR 478.)

Prior Codifications. — 1981 Ed., § 3-1101.

Legislative history of Law 7-210. — Law 7-210, the “D.C. General Hospital Hospice Program Establishment Act of 1988,” was introduced in Council and assigned Bill No. 7-147, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the

Mayor on January 6, 1989, it was assigned Act No. 7-281 and transmitted to both Houses of Congress for its review.

Editor’s notes. — As enacted by D.C. Law 7-210, § 2, this section contained the subdivision designation “(1).” As this material contained no other subdivision designations, the designation “(1)” has been deleted for stylistic consistency.

§ 4-1102. D.C. General Hospital Hospice Program; established.

(a) There is established a hospice program to be administered by the D.C. General Hospital. The purpose of this program shall be to:

(1) Provide care and support for the patients who have a terminal condition;

(2) Educate consumers and providers regarding the benefits of hospice programs; and

(3) Encourage volunteerism to assist the terminally ill.

(b) The program shall be designed to enable the patient to live as fully as possible during the final period of his or her life.

(c) The program shall be administered by the Hospice Program Coordinator (“Coordinator”), who shall be appointed by the Executive Director of D.C. General Hospital (“Executive Director”), with the consent of the D.C. General Hospital Commission (“Hospital Commission”), within 120 days after March 16, 1989. The Coordinator position shall be full-time.

(d) The duties of the Coordinator shall include, but not be limited to:

(1) Assisting and counseling the family of the patient before and after the death of the patient;

(2) Educating the D.C. General Hospital health-care staff and the community about the hospice concept and the program’s activities;

(3) Establishing a hospice volunteer program utilizing existing systems and community resources;

(4) Selecting, with the consent of the Executive Director and the Hospital Commission, a location to carry out the functions of the program; and

(5) Establishing an inpatient component of the program pursuant to § 44-1801 et seq. [repealed].

(e) There shall be a hospice care team that shall carry out the purposes of this chapter and provide for the physical, emotional, and spiritual needs of the terminally ill patient.

(f) The program shall offer the following types of services:

- (1) Inpatient management;
- (2) Home care;
- (3) Clinic treatment;
- (4) Bereavement counseling; and
- (5) Consultation with attending physicians.

(Mar. 16, 1989, D.C. Law 7-210, § 3, 36 DCR 478.)

Prior Codifications. — 1981 Ed., § 3-1102. legislative history of D.C. Law 7-210, see Historical and Statutory Notes following § 4-1101.
Legislative history of Law 7-210. — For

§ 4-1103. Appropriations.

There is authorized to be appropriated funds necessary to carry out the purposes of this chapter.

(Mar. 16, 1989, D.C. Law 7-210, § 4, 36 DCR 478.)

Prior Codifications. — 1981 Ed., § 3-1103. legislative history of D.C. Law 7-210, see Historical and Statutory Notes following § 4-1101.
Legislative history of Law 7-210. — For

§ 4-1104. Rules.

Within 120 days of March 16, 1989, the D.C. General Hospital Commission shall, pursuant to § 44-1920 [repealed], issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 16, 1989, D.C. Law 7-210, § 5, 36 DCR 478.)

Prior Codifications. — 1981 Ed., § 3-1104. legislative history of D.C. Law 7-210, see Historical and Statutory Notes following § 4-1101.
Legislative history of Law 7-210. — For

§ 4-1105. Report.

The D.C. General Hospital Commission shall report, on an annual basis beginning December 31, 1989, to the Council of the District of Columbia regarding the development of the program and the number of patients served.

(Mar. 16, 1989, D.C. Law 7-210, § 6, 36 DCR 478.)

Prior Codifications. — 1981 Ed., § 3-1105. §§ 1801 and 1802 of the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999, see § 2 of Burial Assistance Program
Temporary Amendment of Section. — For temporary (225 day) amendment of

Reestablishment Temporary Amendment Act of 1999 (D.C. Law 13-76, April 5, 2000, law notification 47 DCR 2633).

Legislative history of Law 7-210. — For legislative history of D.C. Law 7-210, see Historical and Statutory Notes following § 4-1101.

CHAPTER 12. EMERGENCY ASSISTANCE PROGRAM. [REPEALED].

Sec.

4-1201 to 4-1232. [Repealed].

§ 4-1201. Definitions. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 2, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1001.

Temporary Amendment of Section. —

For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — For temporary repeal of § 3-1001 through 3-1032, see § 7 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 7 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 7 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and

§ 7 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

§ 4-1202. Requirements. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 3, 36 DCR 553; Sept. 26, 1996, D.C. Law 11-52, § 505(a), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1002.

Temporary Amendment of Section. —

For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1203. Emergency assistance. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 4, 36 DCR 553; Aug. 17, 1991, D.C. Law 9-19, title I, § 102(a), 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-27, § 3(a), 38 DCR 4205; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1003.

Temporary Amendment of Section. —

For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary

Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1204. Timeframes for emergency assistance; procedures for application. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 5, 36 DCR 553; July 23, 1994, D.C. Law 10-137, § 2, 41 DCR 3008; Apr. 18, 1996, D.C. Law 11-110, § 10, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1004.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1205. Applicant unit. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 6, 36 DCR 553; Aug. 17, 1991, D.C. Law 9-19, title I, § 102(b), 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-27, § 3(b), 38 DCR 4205; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1005.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1206. Residency requirement. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 7, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1006.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1207. Employment requirement. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 8, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1007.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1208. Income eligibility standard. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 9, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1008.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1209. Income exempt from determination of eligibility. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 10, 36 DCR 553; Mar. 23, 1995, D.C. Law 10-253, § 504(b), 42 DCR 721; Sept. 26, 1995, D.C. Law 11-52, § 505(b), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1009.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1210. Income considered in determination of eligibility. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 11, 36 DCR 553; Aug. 17, 1991, D.C. Law 9-19, title I, § 102(c), 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-27, § 3(c), 38 DCR 4205; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1010.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1211. Assets and resources exempt from determination of eligibility. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 12, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1011.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1212. Assets and resources considered in determination of eligibility. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 13, 36 DCR 553; Feb. 5, 1994, D.C. Law 10-68, § 12, 40 DCR 6311; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1012.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1213. Computation of emergency assistance payments. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 14, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1013.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1214. Emergency related eligibility. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 15, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(d), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1014.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see

§ 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201. legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

Legislative history of Law 12-241. — For

§ 4-1215. Food emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 16, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(d), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1015.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1216. Clothing emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 17, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(e), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1016.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1217. Essential household items emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 18, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(f), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1017.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1218. Essential large appliances emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 19, 36 DCR 553; Sept. 26, 1995, D.C. Law

11-52, § 505(g), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1018.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1219. Essential furniture emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 20, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(h), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1019.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1220. Rent emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 21, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(i), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1020.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1221. Mortgage emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 22, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(j), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1021.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1222. Essential home repairs emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 23, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(k), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1022.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1223. Storage and moving emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 24, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(l), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1023.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1224. Security or damage deposits. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 25, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(m), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1024.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1225. Deposit for heat or utility emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 26, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(n), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1025.
Temporary Amendment of Section. —

For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary

Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).
Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1226. Utility emergency. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 27, 36 DCR 553; June 14, 1994, D.C. Law 10-128, § 601(a), 41 DCR 2096; Sept. 26, 1995, D.C. Law 11-52, § 505(o), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1026.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1227. Necessities of employment. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 28, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(p), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1027.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1228. Burial assistance. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 29, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(q), 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 2002, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1028.
Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).
Emergency legislation. — See notes to § 4-1201.

669), and § 1602 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Section 1604 of D.C. Act 12-401 provided that title XVI of the act shall expire after 225 days of its having taken effect.

For temporary amendment of former § 3-1028 1981 Ed., see § 1802 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary amendment of former § 3-1028 1981 Ed., see § 1602 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR

For temporary (90-day) amendment of section, see § 1602 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act

of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 1802 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Editor’s notes. — Section 3-1028 had been amended March 26, 1999 by D.C. Law 12-175, § 2002, 45 DCR 7193; however effect was given to the repeal of the section by D.C. Law 12-241, § 7, effective April 20, 1999.

Section 3-1028 was amended by D.C. Law 13-38, § 1802, effective October 20, 1999; this amendment was not given effect due to the section’s repeal by D.C. Law 12-241, § 7, effective April 20, 1999.

§ 4-1229. Multiple emergency assistance requests. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 30, 36 DCR 553; June 14, 1994, D.C. Law 10-128, § 601(b), 41 DCR 2096; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1029.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1230. Waiver by Mayor. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 31, 36 DCR 553; Sept. 26, 1995, D.C. Law 11-52, § 505(r), 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1030.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1230.01. No creation of an entitlement. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 31a, as added Aug. 1, 1996, D.C. Law 11-152, § 102, 43 DCR 2978; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1030.1.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see

§ 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1231. Rules. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 32, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1031.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

§ 4-1232. Appeals. [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-221, § 33, 36 DCR 553; Apr. 20, 1999, D.C. Law 12-241, § 7, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 3-1032.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 7 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

Emergency legislation. — See notes to § 4-1201.

Legislative history of Law 12-230. — For legislative history of D.C. Law 12-230, see Historical and Statutory Notes following § 4-1201.

Legislative history of Law 12-241. — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 4-1201.

CHAPTER 13. CHILD ABUSE AND NEGLECT.

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Subchapter I. Prevention of Child Abuse and Neglect.

PART A.

REPORTING ABUSE AND NEGLECT.

§ 4-1301.01. [Reserved].

§ 4-1301.02. Definitions.

For the purposes of this subchapter:

(1) "Abused", when used in reference to a child, shall have the same meaning as is provided in § 16-2301(23).

(2) "Adoption promotion and support services" means services and activities designed to encourage more adoptions of committed children, when such

adoptions promote the best interest of the children, including such activities as pre-and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.

(2A) Except where used in title IV of this act, "Agency" means the Child and Family Services Agency established by § 4-1303.01a.

(2A-i) "Behavioral health" means a person's overall social, emotional, and psychological well-being and development.

(2A-ii) "Behavioral health assessment" means a more thorough and comprehensive examination by a mental health professional of all behavioral health issues and needs identified during an initial behavioral health screening by which the mental health professional shall identify the type and extent of the behavioral health problem and make recommendations for treatment interventions.

(2A-iii) "Behavioral health screening" means a brief process designed to identify youth who are at risk of having behavioral health disorders that warrant immediate attention, or intervention, or to identify the need for further assessment with a more comprehensive examination.

(2B) "CAC" means Safe Shores, the District of Columbia's Children's Advocacy Center.

(3) "Case plan" means a written document concerning a child that includes at least the following:

(A) A description of the type of home or institution in which the child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency that is responsible for the child plans to carry out the voluntary placement agreement or judicial determination made with respect to the child;

(B) A plan for assuring that the child receives safe and proper care and that services are available to the parents, child, and foster parents in order to improve conditions in the parents' home, facilitate return of the child to his or her own safe home or to the child's permanent placement, and address the child's needs while a committed child, including the appropriateness of services provided to the child under the plan;

(C) To the extent available and accessible, the child's health and education records;

(D) Where appropriate, for a child 16 years of age or over, a written description of the programs and services which will help the child prepare for the transition from being a committed child to independent living; and

(E) If the child's permanent plan is adoption or placement in another permanent home, documentation of the steps (including child specific recruitment efforts) taken to accomplish the following:

(i) Find an adoptive family or other permanent living arrangement, such as with a legal custodian, with a kinship caregiver, or in independent living;

(ii) Place the child with an adoptive family, a kinship caregiver, a legal custodian, or in another planned permanent living arrangement; and

(iii) Finalize the adoption or legal custody or guardianship.

(F) In the case of a child with respect to whom the permanency plan is

placement with a relative and receipt of kinship guardianship assistance payments under § 16-2399, a description of the:

(i) Steps taken to determine that it is not appropriate for the child to be returned home or adopted;

(ii) Reasons for any separation of siblings during placement;

(iii) Reasons a permanent placement with a fit and willing relative through a kinship guardianship-assistance arrangement is in the child's best interests;

(iv) Ways in which the child meets the eligibility requirements for a kinship guardianship-assistance payment;

(v) Efforts made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and

(vi) Efforts made to discuss with the child's parent the kinship guardianship-assistance arrangement, or the reasons the efforts were not made; and

(G) A plan for ensuring the educational stability of the child while in foster care, including:

(i) Assurances that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(ii)(I) An assurance that the Agency has coordinated with appropriate local educational agencies, as defined under section 9101(26) of the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (115 Stat. 1425; 20 U.S.C. § 7801(26)), to ensure that the child remains in the school in which the child is enrolled at the time of placement; or

(II) If remaining in the school the child is enrolled in at the time of placement is not in the best interests of the child, assurances by the Agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school.

(4) "Child Protection Register" means the confidential index of all reports established pursuant to § 4-1302.01.

(4A) "Consumer reporting agency" means a person or entity that assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports and the disclosure of file information to third parties.

(5) "Credible evidence" means any evidence that indicates that a child is an abused or neglected child, including the statement of any person worthy of belief.

(6) "Director" means the Director of the Child and Family Services Agency established by § 4-1303.01.

(6A) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(7) "Drug" shall have the same meaning as the term "controlled substance" has in § 48-901.02(4).

(8) “Drug-related activity” means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(9) “Entry into foster care” means the earlier of:

(A) The date of the first judicial finding that the child has been neglected; or

(B) The date that is 60 days after the date on which the child is removed from the home.

(9A) [Not funded].

(10) “Family preservation services” means services for children and families who are at risk of abuse or neglect, or in crisis, including:

(A) Services designed to help children return to families from which they have been removed, or be placed for adoption, where safe and appropriate, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for a child, in another permanent living arrangement;

(B) Replacement prevention services;

(C) Services which provide follow-up care to families to whom a child has returned after commitment;

(D) Respite care services; and

(E) Services designed to improve parenting skills and abilities.

(11) “Family support services” means community-based services to promote the safety and well-being of children and families, and designed to:

(A) Increase family strength and stability;

(B) Increase parent confidence and competence;

(C) Afford children safe, stable, and supportive family environments; and

(D) Otherwise enhance child development.

(12) “God parent” means an individual identified by a relative of the child by blood, marriage, domestic partnership, or adoption, in a sworn affidavit, to have close personal or emotional ties with the child or the child’s family, which pre-dated the child’s placement with the individual.

(13) “Guardian ad litem” means an attorney appointed by the Superior Court of the District of Columbia to represent the child’s best interests in neglect proceedings.

(13A) “Inconclusive report” means a report, made pursuant to § 4-1321.03, which cannot be proven to be either substantiated or unfounded.

(14) “Kinship caregiver” means an individual who:

(A) Is approved by the Division to provide kinship care;

(B) Is at least 21 years of age;

(C) Is providing, or is willing to provide for, the day-to-day care of a child; and

(D) Either:

(i) Is a relative of the child by blood, marriage, domestic partnership, or adoption; or

(ii) Is a godparent of the child.

(15) “Law enforcement officer” means a sworn officer of the Metropolitan Police Department of the District of Columbia.

(15A) "Neglected child" shall have the same meaning as is provided in § 16-2301(9).

(15B) "Panel" means the Citizen Review Panel established by § 4-1303.51.

(15C) "Placement disruption" means an unplanned move necessary to protect the safety and well-being of the youth.

(16) "Police" means the Metropolitan Police Department of the District of Columbia.

(17) "Report" means a report to the police or the Agency of a suspected or known neglected child.

(18) Repealed.

(19) "Source" means the person or institution from whom a report originates.

(19A) "Substantiated report" means a report, made pursuant to § 4-1321.03, which is supported by credible evidence and is not against the weight of the evidence.

(20) "Time-limited family reunification services" means services and activities provided to a committed child and to the child's parent, guardian, or custodian in order to facilitate the safe, appropriate, and timely reunification of the child during the 15 months following the child's entry into foster care. Time-limited family reunification services include:

(A) Individual, group, and family counseling;

(B) Inpatient, residential, or outpatient substance abuse treatment services;

(C) Mental health services;

(D) Assistance to address domestic violence;

(E) Services designed to provide temporary child care and therapeutic services for families; and

(F) Transportation to or from any of the services and activities described in this paragraph.

(20A) "Unfounded report" means a report, made pursuant to § 4-1321.03, which is made maliciously or in bad faith or which has no basis in fact.

(21) Repealed.

(22) "Youth" means an individual under 18 years of age residing in the District and those classified as youth in the custody of the Agency who are 21 years of age or younger.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 102, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(a), 37 DCR 50; June 27, 2000, D.C. Law 13-136, § 201(a), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(a), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 2(a), 49 DCR 7815; Apr. 12, 2005, D.C. Law 15-341, § 2(a), 52 DCR 2315; Apr. 13, 2005, D.C. Law 15-354, § 96, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 20, 53 DCR 6794; Sept. 12, 2008, D.C. Law 17-231, § 12, 55 DCR 6758; May 27, 2010, D.C. Law 18-162, § 2(a), 57 DCR 3029; Sept. 24, 2010, D.C. Law 18-228, § 2(a), 57 DCR 6926; Mar. 12, 2011, D.C. Law 18-312, § 2(a), 57 DCR 12398; June 7, 2012, D.C. Law 19-141, § 505(a), 59 DCR 3083.)

Prior Codifications. — 1981 Ed., § 6-2101. 1973 Ed., § 6-2101.

Effect of amendments. — D.C. Law 13-136 rewrote this section, which formerly read:

“For the purposes of this act:

“(1) ‘Child Protection Register’ means the confidential index of all reports established pursuant to § 6-2111.

“(2) ‘Credible evidence’ means any evidence which indicates that a child is an abused or neglected child, including the statement of any person worthy of belief.

“(3) Except where used in title IV of this act, ‘Division’ means the Child Protective Services Division of the District of Columbia Department of Human Services.

“(4) ‘Guardian ad litem’ means an attorney appointed by the Superior Court of the District of Columbia to represent the child’s best interests in neglect proceedings.

“(5) ‘Police’ means the Metropolitan Police Department of the District of Columbia.

“(6) ‘Report’ means a report to the police or the Division of a suspected or known neglected child.

“(7) ‘Source’ means the person or institution from whom a report originates.

“(8) ‘Supported report’ means a report, made pursuant to § 2-1353, which is supported by credible evidence.

“(9) ‘Unsupported report’ means a report, made pursuant to § 2-1353, which is not supported by credible evidence.

“(10) ‘Drug’ shall have the same meaning as the term ‘controlled substance’ has in § 33-501(4).

“(11) ‘Drug-related activity’ means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

“(12) ‘Law enforcement officer’ means a sworn officer of the Metropolitan Police Department of the District of Columbia.

“(13) ‘Abused,’ when used with reference to a child, means a child whose parent, guardian or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment, an act of sexual abuse, molestation, or exploitation, or an injury that results from exposure to drug-related activity.”

D.C. Law 13-277 added par. (2A) and rewrote par. (6) which had read:

“(6) ‘Division’ means the Child Protective Services Division of the District of Columbia Department of Human Services.”

D.C. Law 14-206 rewrote par. (1); added pars. (12A), (14A), (18A), and (19A); and repealed pars. (17) and (20).

D.C. Law 15-341 added pars. (2B) and (15B).

D.C. Law 15-354, in pars. (13A), (15A), (18), (19A), (20A), and (21), validated previously made technical corrections.

D.C. Law 16-191, in par. (15B), validated a previously made technical correction.

D.C. Law 17-231 added par. (6A); and, in pars. (12) and (14)(D)(i), substituted “marriage, domestic partnership,” for “marriage.”

D.C. Law 18-162 added par. (4A).

D.C. Law 18-228 added par. (9A).

D.C. Law 18-312 added pars. (3)(F) and (G).

D.C. Law 19-141 added pars. (2A-i), (2A-ii), (2A-iii), (15C), and (22).

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 3 of Prevention of Child Neglect Temporary Amendment Act of 1993 (D.C. Law 10-61, November 20, 1993, law notification 40 DCR 8454).

For temporary (225 day) amendment of section, see § 201(a) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

For temporary (225 day) amendment of section, see § 2(a) of Adoption and Safe Families Compliance Temporary Amendment Act of 2000 (D.C. Law 13-193, October 21, 2000, law notification 47 DCR 8983).

For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Section 2 of D.C. Law 18-136, in par. (3), added subpars. (F) and (G) to read as follows:

“(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under D.C. Official Code § 16-2399, a description of the:

“(i) Steps taken to determine that it is not appropriate for the child to be returned home or adopted;

“(ii) Reasons for any separation of siblings during placement;

“(iii) Reasons a permanent placement with a fit and willing relative through a kinship guardianship-assistance arrangement is in the child’s best interests;

“(iv) Ways in which the child meets the eligibility requirements for a kinship guardianship-assistance payment;

“(v) Efforts made to discuss adoption by the child’s relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and

“(vi) Efforts made to discuss with the child’s parent the kinship guardianship-assistance arrangement, or the reasons the efforts were not made; and

“(G) A plan for ensuring the educational stability of the child while in foster care, including:

“(i) Assurances that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

“(ii)(I) An assurance that the Agency has coordinated with appropriate local educational agencies, as defined under section 601(f) of the Elementary and Secondary Education Act of 1965, approved April 11, 1965 (79 Stat. 27; 20 USC § 7801), to ensure that the child remains in the school in which the child is enrolled at the time of placement; or

“(II) If remaining in the school the child is enrolled in at the time of placement is not in the best interests of the child, assurances by the Agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.”.

Section 4(b) of D.C. Law 18-136 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-298 added pars. (3)(F) and (G) to read as follows:

“(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under D.C. Official Code § 16-2399, a description of the:

“(i) Steps taken to determine that it is not appropriate for the child to be returned home or adopted;

“(ii) Reasons for any separation of siblings during placement;

“(iii) Reasons a permanent placement with a fit and willing relative through a kinship guardianship-assistance arrangement is in the child's best interests;

“(iv) Ways in which the child meets the eligibility requirements for a kinship guardianship-assistance payment;

“(v) Efforts made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and

“(vi) Efforts made to discuss with the child's parent the kinship guardianship-assistance arrangement, or the reasons the efforts were not made; and

“(G) A plan for ensuring the educational stability of the child while in foster care, including:

“(i) Assurances that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

“(ii)(I) An assurance that the Agency has coordinated with appropriate local educational

agencies, as defined under section 601(f) of the Elementary and Secondary Education Act of 1965, approved April 11, 1965 (79 Stat. 27; 20 USC § 7801), to ensure that the child remains in the school in which the child is enrolled at the time of placement; or

“(II) If remaining in the school the child is enrolled in at the time of placement is not in the best interests of the child, assurances by the Agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.”.

Section 4(b) of D.C. Law 18-298 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 3 of the Prevention of Child Neglect Emergency Amendment Act of 1993 (D.C. Act 10-100, August 9, 1993, 40 DCR 6141).

For temporary amendment of section, see § 3 of the Prevention of Child Neglect Emergency Amendment Act of 1994 (D.C. Act 10-288, July 22, 1994, 41 DCR 4992).

For temporary (90-day) amendment of section, see § 201(a) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 201(a) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 201(a) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90-day) amendment of section, see § 2 of the Adoption and Safe Families Compliance Emergency Amendment Act of 2000 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) amendment of section, see § 2(a) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency

Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

For temporary (90 day) amendment of section, see § 2 of Prevention of Child Abuse and Neglect Emergency Amendment Act of 2009 (D.C. Act 18-259, January 4, 2010, 57 DCR 337).

For temporary (90 day) amendment of section, see § 2 of Prevention of Child Abuse and Neglect Emergency Amendment Act of 2010 (D.C. Act 18-586, October 20, 2010, 57 DCR 10136).

Legislative history of Law 2-22. — Law 2-22, the “Prevention of Child Abuse and Neglect Act of 1977,” was introduced in Council and assigned Bill No. 2-48, which was referred to the Committee on Human Resources and Aging and the Committee on the Judiciary. The Bill was adopted on first and second readings on May 17, 1977, and May 31, 1977, respectively. Signed by the Mayor on July 6, 1977, it was assigned Act No. 2-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-87. — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 4-1301.06a.

Legislative history of Law 13-136. — Law 13-136, the “Adoption and Safe Families Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

Legislative history of Law 13-277. — Law 13-277, the “Child and Family Services Agency Establishment Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-796, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No. 13-590 and transmitted to Both Houses of Congress for its review. D.C. Law 13-277 became effective on April 4, 2000.

Legislative history of Law 14-206. — Law 14-206, the “Improved Child Abuse Investigations Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-372, which was referred to Committee on the Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-440 and transmitted to both Houses of Congress for its review. D.C.

Law 14-206 became effective on October 19, 2002.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002,” was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-341. — Law 15-341, the “Child in Need of Protection Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-389 which was referred to the Committee on Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-758 and transmitted to both Houses of Congress for its review. D.C. Law 15-341 became effective on April 12, 2005.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 4-204.55.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

Legislative history of Law 18-162. — Law 18-162, the “Foster Care Youth Identity Protection Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-449, which was referred to the Committee on Human Services. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the Mayor on April 2, 2010, it was assigned Act No. 18-354 and transmitted to both Houses of Congress for its review. D.C. Law 18-162 became effective on May 27, 2010.

Legislative history of Law 18-228. — Law 18-228, the “Families Together Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-667, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 7, 2010, it was

assigned Act No. 18-472 and transmitted to both Houses of Congress for its review. D.C. Law 18-228 became effective on September 24, 2010.

Legislative history of Law 18-312. — Law 18-312, the “Prevention of Child Abuse and Neglect Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-579, which was referred to the Committee on Human Services, Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 13, 2010, it was assigned Act No. 18-633 and transmitted to both Houses of Congress for its review. D.C. Law 18-312 became effective on March 12, 2011.

Legislative history of Law 19-141. — Law 19-141, the “South Capitol Street Memorial Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-211, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 6, 2012, and March 20, 2012, respectively. Signed by the Mayor on April 10, 2012, it was assigned Act No. 19-344 and trans-

mitted to both Houses of Congress for its review. D.C. Law 19-141 became effective on June 7, 2012.

References in text. — “Title IV of this act”, referenced in par. (2A), is title IV of Law 2-22, which is codified to 16-2304, 16-2310, 16-2313, 16-2315, 16-2319, 16-2320, 16-2323 to 16-2338, and 16-2351 to 16-2365.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. 14-206 shall apply as of October 1, 2003.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Section 3 of D.C. Law 18-228 provided: “Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of D.C. Law 18-228 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by D.C. Law 18-228, are not in effect.

CASE NOTES

ANALYSIS

Determination of liability.
Duty of agency.
Rights of action.

Determination of liability.

Standard for determining whether District of Columbia officials were liable under § 1983 to children in foster care under supervision of Department of Human Services (DHS) was whether officials had exercised competent professional judgment in administration of district’s child welfare system; deliberate indifference was not required. 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Duty of agency.

Superior Court Neglect Rules, requiring agency to provide report to trial court including plan to prepare child for independent living, and requiring judicial officer to enter order stating what services, supervision, and support child should be provided by agency, together with municipal regulation requiring independent living program to create discharge plan for departing residents that included supports and resources, did not authorize trial court to issue order requiring Child and Family Services Agency (CFSA) to pay directly to neglected

child on his twenty-first birthday, after independent living program in which child had been placed by CFSA closed three weeks prior to his emancipation, apparently relegating child to homeless shelter, \$1,800 in “emancipation funds” which had allegedly been promised child by program, inasmuch as “support” could not mean money paid to neglected child for use after his emancipation, when he was beyond CFSA’s supervision, because that interpretation would conflict with Prevention of Child Abuse and Neglect Act of 1977 (PCANA). In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

As a general rule, there is no individual right of action for damages against the government for failure to protect a particular citizen from harm caused by the criminal conduct of another; a narrow exception to this no-liability rule has been recognized where, for example, the police by their actions affirmatively undertake to protect an individual under circumstances creating a special relationship or there is a statute or regulation which mandates protection of a particular class and where the individual justifiably relies upon such undertaking of the police, or the statute or regulations. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

When abused and neglected children have been individually identified to the government agency charged with their protection, then a duty, although narrow and specific, is created

by statute to benefit the individually identified persons. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

Rights of action.

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

District of Columbia's Youth Residential Facilities Licensure Act permits children in foster care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to "the care" of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357, 3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

Trial court lacked statutory authority under Prevention of Child Abuse and Neglect Act of 1977 to order Child and Family Services

Agency (CFSA) to pay \$1,800 in emancipation funds to neglected child on his twenty-first birthday; requiring CFSA to pay child directly upon his twenty-first birthday, when he was no longer under CFSA's supervision and was thus free to use money in whatever way he chose, would be inconsistent with purpose and design of Neglect Statute. In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

Trial court lacked statutory authority under Prevention of Child Abuse and Neglect Act of 1977 (PCANA) to order Child and Family Services Agency (CFSA) to pay to neglected child on his twenty-first birthday, after independent living program in which child had been placed by CFSA closed three weeks prior to his emancipation, apparently relegating child to homeless shelter, \$1,800 in "emancipation funds" which had allegedly been promised child by program; requiring CFSA to pay child directly upon his twenty-first birthday, when he was no longer under CFSA's supervision and was thus free to use money in whatever way he chose, would be inconsistent with purpose and design of PCANA. In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

Prevention of Child Abuse and Neglect Act created special relationship between Child Protective Services Division and narrowly defined class of persons: abused and neglected children; once report of child abuse or neglect is filed, which specifically identifies abused or neglected child, special relationship exists between District and specifically identified child or children, so that action can be maintained against District of Columbia for breach of duty. D.C. Code 1981, §§ 6-2102, 6-2121(a), 6-2122(a, c, e). *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

§ 4-1301.03. [Reserved].

§ 4-1301.04. Handling of reports — By Agency.

(a)(1) The Agency shall conduct a thorough investigation of a report of suspected child abuse or neglect to protect the health and safety of the child or children.

- (2) [Not funded].
- (3) [Not funded].
- (4) [Not funded].
- (5) [Not funded].
- (6) [Not funded].

(b) The investigation shall commence:

(1) Immediately upon receiving a report of suspected abuse or neglect or a referral for investigation following a family assessment indicating that the child's safety or health is in immediate danger; and

(2) As soon as possible, and at least within 24 hours, upon receiving any

report or a referral for investigation following a family assessment not involving immediate danger to the child.

(c) The initial phase of the investigation shall:

(1) Be completed within 24 hours of its commencement;

(2) Include notification and coordination with the Metropolitan Police Department when there is indication of a crime, including sexual or serious physical abuse; and

(3) Include:

(A) Seeing the child and all other children in the household outside of the presence of the caretaker or caretakers;

(B) Conducting an interview with the child's caretaker or caretakers;

(C) Speaking with the source of the report;

(D) Assessing the safety and risk of harm to the child from abuse or neglect in the place where the child lives;

(E) Deciding on the safety of the child and of other children in the household;

(F) Deciding on the safety of other children in the care or custody of the person or persons alleged to be abusing or neglecting the child; and

(G) [Not funded].

(d) The Agency may request the assistance of the Metropolitan Police Department to assist in the investigation or to ensure the safety of Agency staff.

(e) [Not funded].

(Sept. 23, 1977, D.C. Law 2-22, title I, § 104, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(b), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(b), 52 DCR 2315; Sept. 24, 2010, D.C. Law 18-228, § 2(b), 57 DCR 6926; Sept. 14, 2011, D.C. Law 19-21, § 5052(a), 58 DCR 6226.)

Section references. — This section is referred to in §§ 4-1301.06a, 4-1303.03, and 4-1303.04. ntype hist sntext 1981 Ed., § 6-2102. ntype hist sntext 1973 Ed., § 6-2102.

Effect of amendments. — D.C. Law 13-277 substituted "Agency" for "Division" throughout the section.

D.C. Law 15-341 rewrote the section.

D.C. Law 18-228 rewrote the section.

D.C. Law 19-21 repealed subsec. (e)(1); and, in subsec. (e)(2), substituted "December 15, 2011" for "October 1, 2010" in the lead-in language, substituted "to phase in full implementation of this alternative to investigation;" for "toward full implementation of this alternative to investigation; and" in subpar. (A), substituted "process; and" for "process." in subpar. (B), and added subpar. (C).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5022(a) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 2-22. — For

legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see note following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Legislative history of Law 18-228. — For Law 18-228, see notes following § 4-1301.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Short title. — Short title: Section 5051 of D.C. Law 19-21 provided that subtitle F of title V of the act may be cited as "Families Together Amendment Act of 2011".

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Section 3 of D.C. Law 18-228 provided: "Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

The Budget Director of the Council of the District of Columbia has determined, as of

February 15, 2012, that the fiscal effect of D.C. Law 18-228 has not been included in an approved budget and financial plan. Therefore,

the provisions of this section, enacted by D.C. Law 18-228, are not in effect. = —

CASE NOTES

ANALYSIS

Due process of law.
Evidence.
In general.
Right of action.
Summary judgment.

Due process of law.

Child did not have due process right to protection by district from private abuse or neglect; by codifying procedures for investigating child abuse and neglect reports, district did not assume constitutional obligation to protect child from such abuse and neglect. U.S. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Even if child had constitutionally protected interest in protection by district from private abuse or neglect as result of district's codification of procedures for investigating reports of child abuse and neglect, district tort law provided adequate postdeprivation remedy to satisfy requirement of due process. U.S.C. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Evidence.

Evidence did not support award of damages against District on behalf of child whose abuse allegedly should have been prevented by District employees; there was no evidence that child's injuries were suffered after, rather than before, District negligently failed to intervene in child's life. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In general.

Children in foster care under supervision of District of Columbia Department of Human Services (DHS) had liberty interest in reasonably safe placements in which they would not be harmed; this right was not limited to safety from physical harm, and extended to safety from psychological and emotional harm. D.C. Code 1981, §§ 3-802(a), 6-2102(b), 6-2107, 6-2123; U.S. Const.Amend. 5; 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Right of action.

Child Abuse Prevention and Treatment Act

(CAPTA) does not create right to prompt investigation of reports of abuse or neglect enforceable under § 1983; CAPTA does not provide sufficiently specific, mandatory terms requiring states to investigate in particular manner or time frame. 42 U.S.C. § 1983; *Child Abuse Prevention and Treatment Act*, § 107(b)(2), as amended, 42 U.S.C. § 5106a(b)(2); D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

As a general rule, there is no individual right of action for damages against the government for failure to protect a particular citizen from harm caused by the criminal conduct of another; a narrow exception to this no-liability rule has been recognized where, for example, the police by their actions affirmatively undertake to protect an individual under circumstances creating a special relationship or there is a statute or regulation which mandates protection of a particular class and where the individual justifiably relies upon such undertaking of the police, or the statute or regulations. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

When abused and neglected children have been individually identified to the government agency charged with their protection, then a duty, although narrow and specific, is created by statute to benefit the individually identified persons. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

Prevention of Child Abuse and Neglect Act created special relationship between Child Protective Services Division and narrowly defined class of persons: abused and neglected children; once report of child abuse or neglect is filed, which specifically identifies abused or neglected child, special relationship exists between District and specifically identified child or children, so that action can be maintained against District of Columbia for breach of duty. D.C. Code 1981, §§ 6-2102, 6-2121(a), 6-2122(a, c, e). *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

Summary judgment.

Genuine issue of material fact as to whether Child Protective Services Division of District of Columbia was negligent in failing to remove neglected and abused children from home of father before one died of malnutrition precluded summary judgment in favor of District and Division employees. D.C. Code 1981, §§ 6-

2102, 6-2121(a), 6-2122(a, c, e). *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

§ 4-1301.05. Handling of reports — By police.

(a) The police shall, as soon as possible after the receipt of a report of a neglected child other than an abused child, inform the Agency of its contents and any action the police are taking or have taken.

(b) The police may, upon the receipt of a report of an abused child, inform the Agency of its contents and shall, as soon as possible when the report is a substantiated report, inform the Agency of its contents and any action they are taking or have taken.

(c) The police shall immediately after a report is received commence an investigation of the circumstances alleged in the report.

(d) The police shall immediately after a report is received commence an investigation of a case of a neglected child in immediate danger which case was referred from the Agency or reported directly to the police.

(e) Upon the receipt of a report alleging a child is or has been left alone or without adequate supervision, the police shall respond to the report immediately and shall take such steps as are necessary to safeguard the child until a Agency staff member arrives: Provided, however, that if the Agency does not arrive within a reasonable time, the police may transport the child to the Agency. The transporting of a child to the Agency pursuant to this subsection shall not be considered a taking into custody as described in § 16-2309.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 105, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(c), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 2(b), 49 DCR 7815.)

Section references. — This section is referred to in § 4-1303.04.

Prior Codifications. — 1981 Ed., § 6-2103. 1973 Ed., § 6-2103.

Effect of amendments. — D.C. Law 13-277 substituted “Agency” for “Division” throughout the section.

D.C. Law 14-206, in subsec. (b), substituted “substantiated report” for “supported report”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in

which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor's notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

CASE NOTES

ANALYSIS

Due process.

In general.

Due process.

Child did not have due process right to protection by district from private abuse or neglect; by codifying procedures for investigating child abuse and neglect reports, district did not assume constitutional obligation to protect child from such abuse and neglect. U.S. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). Doe by Fein v. District of Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Even if child had constitutionally protected interest in protection by district from private abuse or neglect as result of district's codification of procedures for investigating reports of child abuse and neglect, district tort law pro-

vided adequate postdeprivation remedy to satisfy requirement of due process. U.S.C. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). Doe by Fein v. District of Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

In general.

Child Abuse Prevention and Treatment Act (CAPTA) does not create right to prompt investigation of reports of abuse or neglect enforceable under § 1983; CAPTA does not provide sufficiently specific, mandatory terms requiring states to investigate in particular manner or time frame. 42 U.S.C. § 1983; Child Abuse Prevention and Treatment Act, § 107(b)(2), as amended, 42 U.S.C. § 5106a(b)(2); D.C. Code 1981, §§ 6-2102(b), 6-2103(c). Doe by Fein v. District of Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

§ 4-1301.06. Investigation.

(a) The full investigation shall be completed no more than 30 days after the receipt of the first notice of the suspected abuse or neglect.

(b) The investigation shall determine:

(1) The nature, extent, and cause of the abuse or neglect, if any;

(2) If mental injury, as defined in § 16-2301(31), is suspected, an assessment of the suspected mental injury by a physician, a psychologist, or a licensed clinical social worker;

(3) If the suspected abuse or neglect is determined to be substantiated:

(A) The identity of the person responsible for the abuse or neglect;

(B) The name, age, sex, and condition of the abused or neglected child and all other children in the home;

(C) The conditions in the home at the time of the alleged abuse or neglect;

(D) Whether there is any child in the home whose health, safety, or welfare is at risk; and

(E) Whether any child who is at risk should be removed from the home or can be protected by the provision of resources, such as those listed in §§ 4-1303.03 and 4-1303.03a.

(c)(1) Within 5 business days after the completion of the investigation, the Agency shall complete a final report of its findings.

(2) The Agency shall provide a copy of a report regarding suspected abuse or neglect that addresses possible criminal activity to the Metropolitan Police

Department, the Office of the Attorney General, and the United States Attorney for the District of Columbia.

(d) If the Agency determines that a report was made in bad faith, the Agency shall refer the report to the Office of the Attorney General, which shall determine whether prosecution of the person making the report in bad faith is warranted.

(e) Nothing in this section shall be read as abrogating the responsibility of the Metropolitan Police Department for criminal investigations.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 106, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(d), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(c), 52 DCR 2315.)

Section references. — This section is referred to in §§ 4-1301.06a, 4-1303.03, and 16-2353.

Prior Codifications. — 1981 Ed., § 6-2104. 1973 Ed., § 6-2104.

Effect of amendments. — D.C. Law 13-277, in subsec. (a), substituted “with the Agency” for “with the Division” and substituted “either the Agency” for “either the department of Human Services”.

D.C. Law 15-341 rewrote the section.

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

CASE NOTES

ANALYSIS

Evidence.

In general.

Notice of liability.

Rights protected.

Evidence.

In negligence action against District, evidence supported finding that District employees did not investigate complaints of abuse of children with reasonable promptness and that detective’s investigation and disposition of abuse complaint was inadequate, which resulted in beating death of one of the children; detective found the children in their home and had opportunity to inspect children and their living conditions, and children’s father, who was not the custodial parent, reported that he had observed marks indicative of physical abuse on children. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In negligence action against District, evidence supported finding that child’s death was proximately caused by District’s actions in failing to adequately investigate reports of abuse; children’s father had reported that children were being abused in mother’s home, and child was beaten to death by mother’s live-in boyfriend. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In negligence action against District for failure of District employees to adequately investigate complaint of child abuse, which resulted in one child’s death, there was adequate evidence, even without expert testimony, that employees failed to conform to applicable standard of care; there was evidence that detective’s investigation of complaint was inconsistent with police department handbook, and there was evidence that police failed to immediately report abuse to Child Protective Services as required. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In general.

Infants were not required to contact child protection government agency in order to establish special relationship between them and agency sufficient to allow infants to recover for agency’s negligence in failing to follow up child abuse report and remove them from abusive environment. *D.C. Code 1981, § 6-2100 et seq. Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

Notice of liability.

Statement in police report that child’s siblings were living in foster care when child was burned was insufficient to put District of Columbia on notice of its liability to child based on Department of Human Services’ (DHS) alleged failure to comply with its statutory duty, and

thus, police report did not meet statutory presuit notice requirement for maintaining suit against District; immediately after notation that siblings were in foster care, report stated that there had been "no allegation of abuse." D.C. Code 1981, §§ 6-2104(b)(5, 6), 12-309. Doe by Fein v. District of Columbia, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Rights protected.

Child Abuse Prevention and Treatment Act (CAPTA) does not create right to prompt investigation of reports of abuse or neglect enforceable under § 1983; CAPTA does not provide sufficiently specific, mandatory terms requiring states to investigate in particular manner or time frame. 42 U.S.C. § 1983; Child Abuse Prevention and Treatment Act, § 107(b)(2), as amended, 42 U.S.C. § 5106a(b)(2); D.C. Code 1981, §§ 6-2102(b), 6-2103(c). Doe by Fein v.

District of Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

District of Columbia Department of Human Services (DHS), by virtue of official policy or custom, deprived children in foster care under its supervision of rights conferred by Adoption Assistance Act; DHS failed to investigate reports of abuse and neglect in timely manner, failed to provide services to children and families, failed to make appropriate foster care placements, failed to develop case plans and failed to assure permanent home for children in its care. Social Security Act, §§ 420-427, 470-476, as amended, 42 U.S.C. §§ 620-627, 670-676; 42 U.S.C. § 1983. LaShawn A. v. Dixon, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

§ 4-1301.06a. Exposure of children to drug-related activity.

(a) Upon receipt of a report that a child (1) is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth; (2) has a controlled substance in his or her body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or (3) is regularly exposed to illegal drug-related activity in the home, the Agency shall:

(1) Commence an initial investigation in accordance with §§ 4-1301.04(b) and 4-1301.06;

(2) Determine whether the child should be removed temporarily from the home environment or can be protected in the home environment in accordance with § 4-1301.07(a); and

(3) Commence a social investigation and provide social services in accordance with § 4-1301.09(b), if the initial investigation results in a substantiated report.

(b) A social investigation pursuant to paragraph (a)(3) of this section shall include:

(1) A determination of whether there is reasonable evidence that any member of the child's home environment uses drugs illegally, is dependent on drugs, or needs drug abuse treatment;

(2) A determination of whether there is reasonable evidence that the child is exposed regularly to drug use in the home environment;

(3) A determination of whether there is reasonable evidence that the distribution or sale of illegal drugs or drug paraphernalia occurs in the child's home environment; and

(4) A determination of whether there is reasonable evidence that drug-related activity has contributed to or is likely to contribute to violent conduct within the child's home environment.

(c) The social services required by paragraph (a)(3) of this section shall include:

(1) Provision of drug treatment to any member of the child's home environment who is determined to be in need of drug treatment according to Chapter 12 of Title 44;

(2) Measures to facilitate action by the child's family, with the assistance of the Agency and the police, if necessary, to eliminate the child's exposure to drug use or to the distribution or sale of illegal drugs or drug paraphernalia in the home environment; and

(3) Any other service authorized or required by this subchapter or other applicable laws or rules of the District.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 106a, as added Mar. 15, 1990, D.C. Law 8-87, § 3(b), 37 DCR 50; Apr. 18, 1996, D.C. Law 11-110, § 13(a), 43 DCR 530; Apr. 4, 2001, D.C. Law 13-277, § 2(e), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 2(c), 49 DCR 7815.)

Prior Codifications. — 1981 Ed., § 6-2104.1.

Effect of amendments. — D.C. Law 13-277 substituted "Agency" for "Division" throughout the section.

D.C. Law 14-206, in subsec. (a), rewrote the lead-in language, and in par. (3), substituted "substantiated report" for "supported report". The lead-in language of subsec. (a) had read as follows: "(a) The Agency shall, upon receipt of a report from a law enforcement officer or a health professional that a child is abused as a result of inadequate care, control, or subsistence due to exposure to drug-related activity in the home environment:"

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 8-87. — Law 8-87, the "Protection of Children from Exposure to Drug-Related Activity Amendment Act of 1989," was introduced in Council and assigned

Bill No. 8-139, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-137 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the "Criminal Code and Miscellaneous Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor's notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1301.06b. Obtaining records.

(a) Notwithstanding any other provision of law, upon the Agency's request, a person who is required to report suspected incidents of child abuse or neglect under § 4-1321.02 shall immediately provide the Agency copies of all records in the possession of the person or the person's employees of:

(1) A child who is the subject of an investigation of child abuse or neglect; provided, that the records bear directly on the allegations of abuse or neglect being investigated; and

(2) Any other child residing in the household where the abuse or neglect is alleged to have occurred when the Agency has a reasonable suspicion that the child's health, safety, or welfare is at risk; provided, that the records bear directly on the basis of the Agency's suspicion.

(b) The Agency shall request the records as needed for its investigation under this part.

(c) The Agency shall not be charged a fee for the records.

(d) If the Agency determines that the report of abuse or neglect is an unfounded report or an inconclusive report, as defined in § 4-1301.02, the Agency shall immediately destroy all copies of any records it has received under this section.

(Sept. 23, 1977, D.C. Law 2-22, § 106b, as added July 18, 2008, D.C. Law 17-198, § 2, 55 DCR 6283; Mar. 25, 2009, D.C. Law 17-353, § 240(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Child Abuse and Neglect Investigation Record Access Temporary Amendment Act of 2006 (D.C. Law 16-213, March 6, 2007, law notification 54 DCR 2764).

For temporary (225 day) addition, see § 2 of Child Abuse and Neglect Investigation Record Access Temporary Amendment Act of 2007 (D.C. Law 17-93, January 29, 2008, law notification 55 DCR 3400).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Child Abuse and Neglect Investigation Record Access Emergency Amendment Act of 2006 (D.C. Act 16-487, October 18, 2006, 53 DCR 8673).

For temporary (90 day) amendment of section, see § 2 of Child Abuse and Neglect Investigation Record Access Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-670, December 28, 2006, 54 DCR 1150).

For temporary (90 day) addition, see § 2 of Child Abuse and Neglect Investigation Record Access Emergency Amendment Act of 2007 (D.C. Act 17-166, October 19, 2007, 54 DCR 10972).

For temporary (90 day) addition, see § 2 of Child Abuse and Neglect Investigation Record Access Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-246, January 23, 2008, 55 DCR 1249).

Legislative history of Law 17-198. — Law 17-198, the "Child Abuse and Neglect Investigation Record Access Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-247 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-395 and transmitted to both Houses of Congress for its review. D.C. Law 17-198 became effective on July 18, 2008.

Legislative history of Law 17-353. — Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

§ 4-1301.07. Removal of children.

(a) In cases in which a child is alleged to be a neglected, but not an abused, child the Agency shall determine whether the child should be removed from the home or can be protected by the provision of services or resources. If in the opinion of the Agency the available services or resources are insufficient to protect the child and there is insufficient time to petition for removal, the Agency shall request the police to remove the child pursuant to § 16-2309(a)(3) or (a)(4).

(b) In all cases for which the police are responsible for the initial investigation but which do not involve an immediate danger to a child, the police shall seek from the Agency and the Agency shall provide assistance in the determination of whether the child can be protected by the provision of services or resources or whether removal is necessary. Whenever possible the Agency shall dispatch a worker to the scene to provide assistance in this determination.

(c) In all cases for which the police are responsible for the initial investigation and which do involve an immediate danger to a child and require removal pursuant to § 16-2309(a)(3), the police shall immediately notify the Agency of the removal and the latter shall investigate alternative placements for the child.

(d) When, prior to a shelter care hearing, the Agency locates a suitable alternative placement pursuant to subsection (c) of this section, the police may release the child pursuant to § 16-2311(a)(1).

(e) The Director of the Agency or his or her designee shall take custody of a child and remove the child from a hospital pending further custody proceedings if:

(1) The Director of the Agency receives written notification from the chief executive officer of a hospital located in the District of Columbia that a child has resided in the hospital for at least 10 days following the birth of the child, despite a medical determination that the child is ready for discharge; and

(2) The parent, guardian, or custodian of the child, as established by the hospital admission records, has not taken any action nor made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 107, 24 DCR 3341; June 8, 1990, D.C. Law 8-134, § 3, 37 DCR 2613; Apr. 4, 2001, D.C. Law 13-277, § 2(f), 48 DCR 2043.)

Section references. — This section is referred to in §§ 4-1301.06a, 4-1303.03, and 16-2309.

Prior Codifications. — 1981 Ed., § 6-2105. 1973 Ed., § 6-2105.

Effect of amendments. — D.C. Law 13-277 substituted "Agency" for "Division" throughout the section; and, in subsec. (e), substituted "Director of the " for "Chief of the".

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 8-134. — Law 8-134, the "Infant and Child Abandonment Prevention Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-404, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-190 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-277. — For

applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

CASE NOTES

ANALYSIS

Due process.
Rights of action.
Summary judgment.

Due process.

Child did not have due process right to protection by district from private abuse or neglect; by codifying procedures for investigating child abuse and neglect reports, district did not assume constitutional obligation to protect child from such abuse and neglect. U.S. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Even if child had constitutionally protected interest in protection by district from private abuse or neglect as result of district's codification of procedures for investigating reports of child abuse and neglect, district tort law provided adequate postdeprivation remedy to satisfy requirement of due process. U.S.C. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Rights of action.

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d

659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

As a general rule, there is no individual right of action for damages against the government for failure to protect a particular citizen from harm caused by the criminal conduct of another; a narrow exception to this no-liability rule has been recognized where, for example, the police by their actions affirmatively undertake to protect an individual under circumstances creating a special relationship or there is a statute or regulation which mandates protection of a particular class and where the individual justifiably relies upon such undertaking of the police, or the statute or regulations. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

When abused and neglected children have been individually identified to the government agency charged with their protection, then a duty, although narrow and specific, is created by statute to benefit the individually identified persons. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

Infants were not required to contact child protection government agency in order to establish special relationship between them and agency sufficient to allow infants to recover for agency's negligence in failing to follow up child abuse report and remove them from abusive environment. D.C. Code 1981, § 6-2100 et seq. *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

Summary judgment.

Genuine issue of material fact as to whether Child Protective Services Division of District of Columbia was negligent in failing to remove neglected and abused children from home of father before one died of malnutrition precluded summary judgment in favor of District and Division employees. D.C. Code 1981, §§ 6-2102, 6-2121(a), 6-2122(a, c, e). *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

§ 4-1301.08. Photographs and radiological examination.

As part of the investigation required by this part, any person responsible for the investigation may take, or have taken, photographs of each area of possible trauma on the child or photographs of the conditions surrounding the sus-

pected abuse or neglect of the child, and if medically indicated, have radiological examinations, including full skeletal x-rays, performed on the child.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 108, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(d), 49 DCR 7815; Apr. 12, 2005, D.C. Law 15-341, § 2(d), 52 DCR 2315.)

Prior Codifications. — 1981 Ed., § 6-2106. 1973 Ed., § 6-2106.

Effect of amendments. — D.C. Law 14-206 substituted “substantiated report” for “supported report”.

D.C. Law 15-341 rewrote the section which had read as follows: “If there is a substantiated report, any person responsible for the investigation under § 4-1301.06 may take, or have taken, color photographs of each area of trauma visible on the child or photographs of the conditions surrounding the neglect of the child and, if medically indicated, have radiological examinations performed on the child.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in

which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

§ 4-1301.09. Social investigation; services; report.

(a) If the initial investigation results in a substantiated report, the information from the initial investigation shall be immediately referred to the police or the Agency, as appropriate. A social investigation shall be commenced immediately by the Agency in all cases of an allegedly abused child which are referred for petition to the Family Agency of the Superior Court of the District of Columbia and by the Agency in all other cases, except that cases which are or were recently active with the Agency may be investigated by the Agency. The purpose of the social investigation shall be to determine what services are required by the family to remedy the conditions of abuse or neglect.

(b) If there is a substantiated report, the agency responsible for the social investigation shall, as soon as possible, prepare a plan for each child and family for whom services are required on more than an emergency basis and shall forthwith take such steps to ensure the protection of the child and the preservation, rehabilitation and, when safe and appropriate, reunification of the family as may be necessary to achieve the purposes of this subchapter. Such steps may include, but need not be limited to: (1) arranging for necessary

protective, rehabilitative and financial services to be provided to the child and the child's family in a manner which maintains the child in his or her home; (2) referring the child and the child's family for placement in a family shelter or other appropriate facility; (3) securing services aimed at reuniting (with his or her family) a child taken into custody, including but not limited to parenting classes and family counseling; (4) providing or making specific arrangements for the case management of each case when child protective services are required; and (5) referring the family to drug treatment services in the event of neglect or abuse that results from drug-related activity. To the maximum extent possible, the resources of the community (public and private) shall be utilized for the provision of services and case management.

(c) A report of the social investigation required under subsection (a) of this section and the plan required under subsection (b) of this section shall be submitted to all counsel at least 5 days prior to the date of the fact-finding hearing in cases in which a petition was filed pursuant to § 16-2305; provided, that nothing added to the report or the plan subsequent to either an initial appearance or shelter care hearing shall be considered by the court prior to the completion of the fact-finding hearing unless the parent, guardian, or custodian alleged to be responsible for the neglect consents to such consideration.

(d) As part of its activities under this section, the agency responsible for the social investigation shall assure:

(1) That each child has a case plan designed to achieve the child's placement in a safe setting that is the least restrictive and most appropriate setting available, and is consistent with the best interests and special needs of the child; and

(2) If the child is placed outside of the home pursuant to § 16-2320(a)(3), that the child's status is reviewed periodically during an administrative review.

(e)(1) The periodic review required by subsection (d)(2) of this section shall determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement outside the home, and to project a date, not exceeding 14 months from the date of removal from the home, by which the child may be returned to and safely maintained in the home or placed for adoption or other permanent placement.

(2) The child and the following individuals, if there are any for the child, and their attorneys, shall be provided notice of, and an opportunity to be heard during, the administrative review required by subsection (d)(2) of this section:

- (A) The child's parents;
- (B) The child's guardian or legal custodian;
- (C) The child's current foster parent;
- (D) The child's current preadoptive parent;
- (E) The child's current kinship caregiver;
- (F) The child's attorney;
- (G) The child's guardian ad litem;
- (H) The child's therapist; and

(I) A relative or other individual with whom the child is currently placed pursuant to § 16-2320(a)(3)(C).

(Sept. 23, 1977, D.C. Law 2-22, title I, § 109, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(c), 37 DCR 50; Mar. 16, 1995, D.C. Law 10-227, § 2(a), 42 DCR 4; June 27, 2000, D.C. Law 13-136, § 201(b), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(g), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 2(e), 49 DCR 7815.)

Prior Codifications. — 1981 Ed., § 6-2107. 1973 Ed., § 6-2107.

Effect of amendments. — D.C. Law 13-136 in subsec. (b) in the first sentence, inserted “safe and” prior to “appropriate”; and added subsecs. (d) and (e).

D.C. Law 13-277 substituted “Agency” for “Division” throughout the section; and, in subsec. (a), substituted “Agency” for “Intrafamily Branch of the Social Services Division of the Superior Court of the District of Columbia”.

D.C. Law 14-206, in subsecs. (a) and (b), substituted “substantiated report” for “supported report”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201(b) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90-day) amendment of section, see § 201(b) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 201(b) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 201(b) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in

which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 8-87. — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 4-1301.06a.

Legislative history of Law 10-227. — Law 10-227, the “Parental Responsibility Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-634, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-368 and transmitted to both Houses of Congress for its review. D.C. Law 10-227 became effective on March 16, 1995.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

CASE NOTES

ANALYSIS

Evidence.

In general.

Rights of action.

Evidence.

In negligence action against District, evidence supported finding that District employees did not investigate complaints of abuse of children with reasonable promptness and that detective's investigation and disposition of abuse complaint was inadequate, which resulted in beating death of one of the children; detective found the children in their home and had opportunity to inspect children and their living conditions, and children's father, who was not the custodial parent, reported that he had observed marks indicative of physical abuse on children. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In negligence action against District for failure of District employees to adequately investigate complaint of child abuse, which resulted in one child's death, there was adequate evidence, even without expert testimony, that employees failed to conform to applicable standard of care; there was evidence that detective's investigation of complaint was inconsistent with police department handbook, and there was evidence that police failed to immediately report abuse to Child Protective Services as required. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In negligence action against District, evidence supported finding that child's death was proximately caused by District's actions in failing to adequately investigate reports of abuse; children's father had reported that children were being abused in mother's home, and child was beaten to death by mother's live-in boyfriend. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

In general.

Children in foster care under supervision of District of Columbia Department of Human Services (DHS) had liberty interest in reasonably safe placements in which they would not be harmed; this right was not limited to safety from physical harm, and extended to safety from psychological and emotional harm. D.C. Code 1981, §§ 3-802(a), 6-2102(b), 6-2107, 6-2123; U.S. Const. Amend. 5; 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Provision of immediate public housing to child and child's family was not "service" within meaning of statute allowing family court, in child neglect proceeding, to order public agency to provide neglected child with needed service that is within agency's legal authority; agency which provided public housing was entirely separate from agencies providing assistance to families and children who were victims of child abuse and neglect, contrary interpretation would undermine rules, provisions, and function of that agency, and action exceeded statute's goal of addressing and remedying unsafe domestic environment. D.C. Code 1981, § 16-2320(a)(5). *In re G.G.*, 667 A.2d 1331, 1995 D.C. App. LEXIS 228 (1995).

Rights of action.

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

District of Columbia's Youth Residential Facilities Licensure Act permits children in foster care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to "the care" of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357, 3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

As a general rule, there is no individual right of action for damages against the government for failure to protect a particular citizen from harm caused by the criminal conduct of another; a narrow exception to this no-liability rule has been recognized where, for example, the police by their actions affirmatively undertake to protect an individual under circumstances creating a special relationship or there is a statute or regulation which mandates protection of a particular class and where the

individual justifiably relies upon such undertaking of the police, or the statute or regulations. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

When abused and neglected children have been individually identified to the government

agency charged with their protection, then a duty, although narrow and specific, is created by statute to benefit the individually identified persons. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

§ 4-1301.09a. Reasonable efforts.

(a) In determining and making reasonable efforts under this section, the child's safety and health shall be the paramount concern.

(b)(1) Except as provided in subsection (c) of this section, reasonable efforts shall be made to preserve and reunify the family by the Agency.

(2) These reasonable efforts shall be made prior to the removal of a child from the home in order to prevent or eliminate the need for removing the child, unless the provision of services would put the child in danger.

(3) Reasonable efforts shall be made to make it possible for the child to return safely to the child's home.

(c) If reasonable efforts as required by subsection (b) of this section are determined to be inconsistent with the child's permanency plan, the Agency shall make reasonable efforts to place the child in accordance with the child's permanency plan and to complete whatever steps are necessary to finalize the child's permanent placement.

(d) The Agency shall not be required to make reasonable efforts to preserve and reunite the family with respect to a parent if:

(1) A court of competent jurisdiction has determined that the parent:

(A) Subjected the child who is the subject of a petition before the Family Court of the Superior Court of the District of Columbia ("Family Court"), a sibling of the child, or another child to cruelty, abandonment, torture, chronic abuse, or sexual abuse;

(B) Committed the murder or voluntary manslaughter of a sibling of the child who is the subject of a petition before the Family Court or another child, or of any other member of the household of the parent;

(C) Aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of the child who is the subject of a petition before the Family Court, a sibling of the child, or another child, or of any other member of the household of the parent; or

(D) Committed an assault that constitutes a felony against the child who is the subject of a petition before the Family Court, a sibling of the child, or another child;

(2) The parent's parental rights have been terminated involuntarily with respect to a sibling.

(e) If reasonable efforts are not made pursuant to subsection (d) of this section:

(1) A permanency hearing conducted pursuant to § 16-2323 shall be held for the child within 30 days after the determination that reasonable efforts are not required; and

(2) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(f) Reasonable efforts to place a child for adoption, with an approved kinship caregiver, with a legal custodian or guardian, or in another permanent placement may be made concurrently with the reasonable efforts required by subsection (b) of this section.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 109a, as added June 27, 2000, D.C. Law 13-136, § 201(c), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(h), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(e), 52 DCR 2315; July 13, 2012, D.C. Law 19-164, § 2, 59 DCR 6185.)

Effect of amendments. — D.C. Law 13-277, in par. (1) of subsec. (b), substituted “Agency” for “Division” and deleted “or the Child Abuse Unit of the Social Services Division of the Superior Court of the District of Columbia, whichever is responsible for making determinations providing services to the child and family,” following “by the Division”; in subsec. (c), substituted “Agency” for “Division” and deleted “or the Child Abuse Unit of the Social Services Division of the Superior Court of the District of Columbia, whichever is responsible for providing services to the child and family,” following “the Division”; and, in subsec. (d), substituted “Agency” for “Division” and deleted “and the Child Abuse Unit of the Social Services Division of the Superior Court of the District of Columbia” following “The Division”.

D.C. Law 15-341, in subpars. (B) and (C) of par. (1) of subsec. (d), substituted “child, or of any other member of the household of the parent” for “child”.

D.C. Law 19-164, in the lead-in language of subsec. (d), substituted “efforts to preserve and reunite the family” for “efforts”; in subsec. (d)(1)(A), substituted “the child who is the subject of a petition before the Family Court of the Superior Court of the District of Columbia (“Family Court”), a sibling of the child, or another child” for “a sibling or another child”; in subsec. (d)(1)(B), substituted “a sibling of the child who is the subject of a petition before the Family Court” for “a sibling”; in subsec. (d)(1)(C), substituted “the child who is the subject of a petition before the Family Court, a sibling of the child, or another child” for “a sibling or another child”; in subsec. (d)(1)(D), substituted “Family Court, a sibling of the child, or another child,” for “Family Division of the Superior Court, a sibling of such a child, or another child; or”; in subsec. (d)(2), substituted “sibling; or” for “sibling”; and added subsec. (d)(3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201(c) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

Section 2 of D.C. Law 19-64, in subsecs. (d)(1)(A) and (C), substituted “child who is the

subject of a petition before the Family Division of the Superior Court, a sibling of such child, or another child” for “sibling or another child”; in subsec. (d)(1)(C), deleted “and” at the end; and added subsec. (d)(1)(E) to read as follows:

“(E) Is required to register with a sex offender registry under section 113(a) of the Adam Walsh Child Protection and Safety Registry, approved July 27, 2006 (120 Stat. 593; 42 U.S.C. § 16913(a)); or”.

Section 5(b) of D.C. Law 19-64 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) addition of § 4-1301.09a, see § 201(c) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) addition of § 4-1301.09a, see § 201(c) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) addition of § 4-1301.09a, see § 201(c) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 4(a) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of section, see § 4(a) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

For temporary (90 day) amendment of section, see § 2 of Child Abuse Prevention and Treatment Emergency Amendment Act of 2011 (D.C. Act 19-165, October 11, 2011, 58 DCR 8896).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Legislative history of Law 19-164. — Law 19-164, the “Child Abuse Prevention and Treatment Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-466, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 17, 2012, and May 1, 2012,

respectively. Signed by the Mayor on May 17, 2012, it was assigned Act No. 19-374 and transmitted to both Houses of Congress for its review. D.C. Law 19-164 became effective on July 13, 2012.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

PART A-i.

MULTIDISCIPLINARY INVESTIGATION TEAM; CONFIDENTIALITY.

§ 4-1301.51. Mandatory investigation of child abuse and neglect cases by multidisciplinary team.

(a) Every instance of sexual abuse of a child shall be reviewed and investigated by a multidisciplinary investigation team (“MDT”), which shall focus, first, on the needs of the child, and, second, on the law enforcement, prosecution, and related civil proceedings. The MDT may handle other instances of child abuse and neglect as identified in the protocol provided in subsection (b) of this section.

(1) A MDT shall consist of one or more representatives of the:

- (A) Metropolitan Police Department;
- (B) Child and Family Services Agency; and
- (C) Office of the Corporation Counsel.

(2) The Office of the United States Attorney and the Children’s Advocacy Center shall be requested to designate one or more representatives to serve on a MDT, and those designated representatives shall be included on the MDT.

(3) A MDT may also include:

- (A) A representative of the District of Columbia Public Schools;
- (B) Licensed mental health practitioners;
- (C) Medical personnel;
- (D) Child development specialists;
- (E) Victim counselors; and
- (F) Experts in the assessment and treatment of substance abuse.

(b) The MDT shall adopt a written child abuse protocol to ensure coordination and cooperation among all agencies investigating and prosecuting cases arising from alleged child abuse or neglect to increase the efficiency and effectiveness of the agencies handling the cases and to facilitate the provision of services to children and families. The protocol shall:

(1) Define additional categories of abuse and neglect cases, in addition to sexual abuse, which will be handled by the MDT;

(2) Outline in detail the procedures to be used in investigating and prosecuting cases arising from alleged child abuse or neglect; and

(3) Outline in detail the methods to be used in coordinating treatment programs and other services to the child, the family, and the perpetrator.

(c) Repealed.

(Sept. 23, 1977, D.C. Law 2-22, title I-A, § 151, as added Oct. 19, 2002, D.C.

Law 14-206, § 2(f), 49 DCR 7815; June 12, 2003, D.C. Law 14-310, § 6, 50 DCR 1092; Mar. 13, 2004, D.C. Law 15-105, § 34(b), 51 DCR 881.)

Effect of amendments. — D.C. Law 14-310, in subsec. (a), validated a previously made technical correction; and repealed subsec. (c) which had read as follows: “(c) Subsections (a) and (b) of this section shall apply as of October 1, 2003.”

D.C. Law 15-105, in subsec. (a), validated a previously made technical correction.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) addition of § 4-1301.51, see § 2 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) amendment of section, see § 2 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 14-206. — Law 14-206, the “Improved Child Abuse Investiga-

tions Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-372, which was referred to Committee on the Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-440 and transmitted to both Houses of Congress for its review. D.C. Law 14-206 became effective on October 19, 2002.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

§ 4-1301.52. Confidentiality of information and records of the Children’s Advocacy Center.

(a)(1) Except as permitted by paragraph (2) of this subsection, all information and records in the possession of Safe Shores, the District of Columbia’s Children’s Advocacy Center, relating to victims or witnesses of alleged child abuse, neglect, or any alleged crime committed against a child shall not be subject to subpoena, discovery, inspection, or disclosure in any court proceeding.

(2) A party may obtain information and records in the possession of the CAC that are covered by paragraph (1) of this subsection, and use such materials in a court proceeding, only upon making a particularized showing that:

(A) The outcome of the proceeding probably would be different if the requested information and records were not disclosed;

(B) The CAC is the only source of the requested information and records;

(C) The requested information and records would be subject to disclosure in the proceeding if they were in the possession of the government; and

(D) Disclosure of the requested information and records would not violate any other applicable law, rule, or regulation.

(3)(A) No subpoenas shall be served upon the CAC. The particularized showing required by paragraph (2) of this subsection may be made only by formal, written motion submitted to the court, supported by an affidavit based

upon personal knowledge, demonstrating strong prima facie evidence that the moving party has satisfied the requirements of paragraph (2) of this subsection.

(B) If, after conducting an initial review of the motion and the supporting evidence, the court determines that the requisite prima facie showing has not been made, the court shall deny the motion.

(C) If the court determines that the requisite prima facie showing has been made, the court shall notify the CAC of the preliminary ruling and afford the CAC an opportunity to oppose the motion within 10 days after the CAC's receipt of the notice, or, for good cause shown, a longer period of time to be determined by the court.

(4) If a party seeking access to information and records protected by paragraph (1) of this subsection prevails on its motion, the CAC shall submit the requested information and records to the court for an in camera review. The court shall permit disclosure only with respect to factual information for which the moving party has requested access and made a particularized showing of need pursuant to paragraph (2) of this subsection. All other information shall be redacted or otherwise protected from disclosure. Under no circumstances shall mental impressions, conclusions, opinions, or theories contained in protected CAC records be subject to disclosure.

(5) The limitations imposed by this subsection do not apply to disclosures of protected CAC information and records to representatives of a multidisciplinary investigation team established under § 4-1301.51, or their respective agents, for use in the performance of their official duties.

(b) For the purposes of this section, the CAC is not an "agency," as that term is defined in § 2-539, and its records are not subject to the disclosure requirements of § 2-532.

(Sept. 23, 1977, D.C. Law 2-22, title 1-A, § 152, as added Apr. 12, 2005, D.C. Law 15-341, § 2(f), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

PART B.

CHILD PROTECTION REGISTER.

§ 4-1302.01. Duties and responsibilities.

(a) There is hereby established a Child Protection Register to be maintained by the Agency.

(b) The purposes of the Register are to:

(1) Maintain, in print or in a database, a confidential index of cases of abused and neglected children;

(2) Assist in the identification and treatment of abused and neglected children and their families; and

(3) Serve as a resource for the evaluation, management, and planning of programs and services for abused and neglected children.

(c) The staff of the Agency assigned to maintain the Child Protection Register shall maintain 24-hour, 7 day-a-week telephone lines which may be combined with the 24-hour intake components described part C of this subchapter.

(d) Said staff shall:

(1) Receive reports and information necessary for the operation of the Child Protection Register and make appropriate entries in such Register as required by § 4-1302.02(a); and

(2) Release information contained in the Child Protection Register in a manner consistent with this subchapter.

(e) The Mayor shall submit a report to the Council on the Agency's plan for implementation of the provisions of this part, as amended by D.C. Law 14-206, no later than January 31, 2003.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 201, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(g), 49 DCR 7815.)

Section references. — This section is referred to in § 4-1301.02.

Prior Codifications. — 1981 Ed., § 6-2111. 1973 Ed., § 6-2111.

Effect of amendments. — D.C. Law 14-206, in subsec. (a), substituted "Agency" for "Division"; in subsec. (b)(1), substituted "Maintain, in print or in a database," for "Maintain"; in subsec. (c), substituted "Agency" for "Department of Human Services"; and added subsec. (e).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

References in text. — D.C. Law 14-206, referred to in subsec. (e), is the Improved Child Abuse Investigations Amendment Act of 2002, Oct. 19, 2002, 49 DCR 7815.

CASE NOTES

In general.

Remedial child neglect legislation should not be construed to deprive court of the use of effective tools to assist neglected child to find suitable adoptive family. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Trial court did not abuse its discretion in authorizing appearance of neglected child, who was in custody of Department of Human Services (DHS) and whose unwed father's parental rights remained intact, to appear on television program which was designed to bring potentially adoptable children to attention of adoptive parents; child had been in institutional care for almost all of his five years, and birth parents had no appreciable contact with him. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Child neglect statute is not intended to provide procedure to take the children of the poor and give them to the rich, nor to take children of the illiterate and give them to the educated, nor to take children of the crude and give them to the cultured, nor to take children of the weak and give them to the strong; these kinds of motivations do not justify removal of child from parent's custody, and they are likewise insufficient to warrant televised display of child for purpose of attracting potential adoptive parents to replace birth parent. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Judicial decree committing neglected child to custody of Department of Human Services (DHS) did not extinguish all of unwed father's parental rights. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

§ 4-1302.02. Information to be retained.

(a) There shall be retained in the Child Protection Register the following information concerning each substantiated and inconclusive report:

- (1) The recipient of the report, the date and the time of the receipt of the report;
- (2) The information required in the report pursuant to § 4-1321.03;
- (3) The census tract and ward in which the child lives and other demographic information concerning the incident referred to in the report;
- (4) The agencies to which the report was referred and the date and the time of the referral;
- (5) The agency or agencies making the initial investigation, the summary of the results of the initial investigation and the dates and the times the investigations were begun and terminated;
- (6) The agency or agencies making the social investigation, the summary of the results of the social investigation, the dates and the times said investigation was begun and terminated, the services offered and when they were offered;
- (7) The agency or agencies to which the referrals were made and the services requested, with the dates of the opening and the closing of the case;
- (8) The placements of the child and the dates of each placement;
- (9) Court actions concerning the child and the dates thereof; and
- (10) The date the case was closed.

(b) There may be retained in the Child Protection Register other information required for research, planning, evaluation and management purposes pursuant to rules adopted according to § 2-501 et seq.

(c) Repealed.

(d) The staff which maintains the Child Protection Register shall review all open cases every 6 months to assure that information in said Register is current and shall request updated information from the appropriate agencies as indicated.

(e) The public agencies responsible for receiving reports, making investigations and providing or securing case management shall be responsible for supplying the information required under this section to the Child Protection Register on a timely basis.

(Sept. 23, 1977, D.C. Law 2-2, title II, § 202, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(h), 49 DCR 7815.)

Section references. — This section is referred to in § 4-1302.01.

Prior Codifications. — 1981 Ed., § 6-2112. 1973 Ed., § 6-2112.

Effect of amendments. — D.C. Law 14-206, in subsec. (a), substituted “concerning each substantiated and inconclusive report:” for “concerning each supported report:”; and repealed subsec. (c). Prior to repeal, subsec. (c) had read as follows: “(c) Information in an unsupported report shall be retained in a separate index in which all information that could identify any person referred to in the unsupported report shall be destroyed.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investiga-

tions Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency

Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole.

The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

§ 4-1302.03. Access to Register; release of information generally.

(a) The staff which maintains the Child Protection Register shall grant access to information contained in said Register only to the following persons:

- (1) Officers of the police for the purpose of an investigation of a report;
- (2) The Corporation Counsel of the District of Columbia or his or her agent for the purpose of fulfilling his or her official duties concerning investigating and prosecuting cases of an allegedly abused or neglected child;

(2A) The United States Attorney for the District of Columbia, or his or her agent, for the purpose of fulfilling his or her official duties concerning investigating and prosecuting cases involving an allegedly abused or neglected child.

(3) The personnel of the Agency and the Social Services Agency of the Superior Court of the District of Columbia for the purpose of investigating a report or providing services to a family or child who is the subject of a report;

(4) The guardian ad litem of a child who is the subject of a report;

(5) Each person identified in a report as a person responsible for the neglect of the child or that person’s attorney;

(6) The parent, guardian, custodian, or attorney of the child who is the subject of the report;

(7) A child-placing agency licensed in the District of Columbia or the Agency’s staff who makes child placements for the purpose of checking a proposed foster care or adoptive placement for a report of abuse or neglect, upon submission of a signed consent for release of information pursuant to § 4-1407.01;

(8) The Child Fatality Review Committee, for the purpose of examining past events and circumstances surrounding child deaths in the District of Columbia and deaths of children who were either residents or wards of the District of Columbia, in an effort to reduce the number of preventable child deaths, especially those deaths attributable to child abuse and neglect and other forms of maltreatment. The Child Fatality Review Committee shall be granted, upon request, access to information contained in the files maintained on any deceased child or on the parent, guardian, custodian, kinship caregiver, day-to-day caregiver, relative/godparent caregiver, or sibling of a deceased child; and

(9) Any member of a multidisciplinary investigation team (“MDT”) estab-

lished pursuant to Part A-i of this subchapter for purposes of an investigation or review conducted by the MDT.

(a-1)(1) Except as provided in paragraph (3) of this subsection, the staff which maintains the Child Protection Register shall grant access to substantiated reports to the chief executive officers or directors of day care centers, schools, or any public or private organizations working directly with children, for the purpose of making employment decisions regarding employees and volunteers or prospective employees and volunteers, if:

(A) The request is made in writing and clearly articulates the basis for the request; and

(B) The request is accompanied by a notarized consent for release of information from the Child Protection Register signed by the employee or volunteer or prospective employee or volunteer.

(2) Information provided pursuant to this subsection shall be limited to information pertaining to the nature and disposition of the report of abuse or neglect and shall not include any identifying information regarding any person other than the employee or volunteer, or prospective employee or volunteer.

(3) The Agency shall not release any information pursuant to this subsection pertaining to a substantiated report that was received prior to the October 19, 2002.

(b) The investigators of a report may divulge the information obtained from the Child Protection Register to medical professionals for the purpose of obtaining a diagnosis of the child who is the subject of the report.

(c) Each person seeking access to the Child Protection Register shall show identification satisfactory to the staff which maintains said Register before access is allowed.

(d) The staff which maintains the Child Protection Register shall not release to those persons identified in paragraphs (5), (6), and (7) of subsection (a) of this section any information that identifies the source of a report or the witnesses to the incident referred to in a report unless said staff first obtains permission from the source of the report or from the witnesses named in the report.

(e) The staff which maintains the Child Protection Register shall release only that information which is necessary for the purpose of the request and which does not violate the confidentiality of the persons identified in the report, except as is necessary to meet the requirements of subsection (a) of this section.

(f) The staff which maintains the Child Protection Register shall not release the information contained in said Register to another jurisdiction unless:

(1) That jurisdiction has comparable safeguards for ensuring the confidentiality of information regarding persons identified in the report and for withholding the identity of the source of the report; or

(2) The staff obtains permission for the release of the information from each person identified in the report and from the source of the report.

(g) The staff which maintains the Child Protection Register shall maintain a record of each release of information, which record shall contain the following information:

- (1) The date of the release of the information;
- (2) To whom the information was released and the address of that person or institution; and
- (3) The purpose for which the information was released.

(h) The information in the Child Protection Register shall be released orally only to the Metropolitan Police Department, to the Office of the Attorney General, and to personnel of the Agency and of the Social Services Agency of the Superior Court of the District of Columbia when they are investigating a report. Any release of information to other persons listed in subsection (a) of this section or pursuant to § 4-1302.04 shall be preceded by a written request from the person requesting the information.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 203, 24 DCR 3341; Aug. 21, 1982, D.C. Law 4-141, § 3, 29 DCR 2867; Mar. 15, 1990, D.C. Law 8-87, § 3(d), 37 DCR 50; Apr. 18, 1996, D.C. Law 11-110, § 13(b), 43 DCR 530; Apr. 4, 2001, D.C. Law 13-277, § 2(i), 48 DCR 2043; Oct. 3, 2001, D.C. Law 14-28, § 4617, 48 DCR 6981; Oct. 19, 2002, D.C. Law 14-206, § 2(i), 49 DCR 7815; Apr. 12, 2005, D.C. Law 15-341, § 2(g), 52 DCR 2315.)

Section references. — This section is referred to in §§ 4-1303.06, 4-1371.06, and 16-1054.

Prior Codifications. — 1981 Ed., § 6-2113. 1973 Ed., § 6-2113.

Effect of amendments. — D.C. Law 13-277 substituted “Agency” for “Division” throughout the section; and, in par. (7) of subsec. (a), substituted “Agency’s” for “Department of Human Services”.

D.C. Law 14-28, in subsec. (a), made nonsubstantive changes in pars. (6) and (7), and added par. (8).

D.C. Law 14-206, in subsec. (a), substituted “concerning investigating and prosecuting cases of an allegedly abused or neglected child,” for “concerning cases of an allegedly neglected or abused child,” in par. (2), added pars. (2A) and (9), and made nonsubstantive changes in pars. (7) and (8); and added subsec. (a-1).

D.C. Law 15-341, in subsec. (h), substituted “Metropolitan Police Department, to the Office of the Attorney General,” for “police”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 17 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) amendment of section, see § 17 of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 17 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 4-141. — Law 4-141, the “District of Columbia Child Placing Authority Act Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-164, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 25, 1982, and June 8, 1982, respectively. Signed by the Mayor on June 30, 1982, it was assigned Act No. 4-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-87. — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 4-1301.06a.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 4-1301.06a.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole.

The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1302.04. Release of information for research and evaluation.

The staff which maintains the Child Protection Register may release information from said Register for research and evaluation only upon an order of the Superior Court of the District of Columbia; provided, however, that no information identifying the persons named in a report shall be made available to the researcher or evaluator.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 204, 24 DCR 3341.)

Section references. — This section is referred to in §§ 4-1302.03 and 4-1303.06.

Prior Codifications. — 1981 Ed., § 6-2114. 1973 Ed., § 6-2114.

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

§ 4-1302.05. Notification of persons identified in a report.

(a) The staff which maintains the Child Protection Register shall, within 7 days from the date that a report is entered in said Register, give notice to each person identified in the report of the fact that the report identifies him or her as responsible for the alleged abuse or neglect of the child who is the subject of the report.

(b) This notice shall include the following information:

(1) The date that the report identifying the person was entered in the Child Protection Register;

(2) The right of the person to review the entire report, except information which identifies other persons mentioned in the report; and

(3) The administrative procedures through which the person may seek to correct information which he or she alleges is incorrect or to establish that the report is unfounded.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 205, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(j), 49 DCR 7815.)

Prior Codifications. — 1981 Ed., § 6-2115. 1973 Ed., § 6-2115.

Effect of amendments. — D.C. Law 14-206 rewrote subsec. (b)(3) which had read as fol-

lows: "(3) The administrative procedures through which the person may seek the correction of information which he or she alleges is incorrect."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency

Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the "Criminal Code and Miscellaneous Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor's notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

§ 4-1302.06. Challenges to information in Register.

The Mayor shall establish, by rules adopted pursuant to § 2-501 et seq., procedures to permit a person identified in the Child Protection Register to challenge information which he or she alleges is incorrect or establish that a report is unfounded.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 206, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(k), 49 DCR 7815.)

Section references. — This section is referred to in § 4-1302.07.

Prior Codifications. — 1981 Ed., § 6-2116. 1973 Ed., § 6-2116.

Effect of amendments. — D.C. Law 14-206 substituted "incorrect or establish that a report is unfounded" for "incorrect".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect,

see § 3 of Improved Child Abuse Investigations Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the "Criminal Code and Miscellaneous Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor's notes. — Application of 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

§ 4-1302.07. Expungement.

(a) Notwithstanding any other provision of law, substantiated reports shall not be expunged from the Child Protection Register.

(b) The staff which maintains the Child Protection Register shall expunge from each inconclusive report all information that identifies any person in the inconclusive report upon the first occurrence of either:

(1) The 18th birthday of the child who is the subject of the report, if there is no reasonable suspicion or evidence that another child living in the same household or under the care of the same parent, guardian, or custodian has been abused or neglected; or

(2) The end of the 5th year after the termination of the social rehabilitation services directed toward the abuse and neglect.

(c) The staff which maintains the Child Protection Register shall expunge:

(1) Any unfounded report immediately upon such classification by the Agency; and

(2) Any material successfully challenged as incorrect pursuant to the rules adopted under § 4-1302.06.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 207, 24 DCR 3341; Oct. 19, 2002, D.C. Law 14-206, § 2(l), 49 DCR 7815; Mar. 13, 2004, D.C. Law 15-105, § 35, 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 6-2117. 1973 Ed., § 6-2117.

Effect of amendments. — D.C. Law 14-206 rewrote the section.

D.C. Law 15-105, in subsec. (b)(1), substituted “the child who is the subject of the report” for “that child”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Improved Child Abuse Investigations Technical Temporary Amendment Act of 2002 (D.C. Law 14-240, March 25, 2003, law notification 50 DCR 2753).

Emergency legislation. — For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations Technical Emergency Amendment Act of 2002 (D.C. Act 14-494, October 23, 2002, 49 DCR 9781).

For temporary (90 day) delay of the applicability of provisions changing the manner in which the Child and Family Services Agency will process reports of child abuse and neglect, see § 3 of Improved Child Abuse Investigations

Technical Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-603, January 7, 2003, 50 DCR 687).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 14-206. — For Law 14-206, see notes following § 4-1301.02.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

Editor’s notes. — Application of Law 14-206: Section 16(b) of D.C. Law 14-310 provided that section 2(a)(2), (4), (5), (6), and (7), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of D.C. Law 14-206 shall apply as of October 1, 2003.

§ 4-1302.08. Penalty for unauthorized release of information.

Any staff member of the Child Protection Register who willfully releases

information obtained from the Register in violation of this subchapter shall be fined not more than \$1,000.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 208, 24 DCR 3341.)

Prior Codifications. — 1981 Ed., § 6-2118. legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 2-22. — For

§ 4-1302.09. Prosecution.

All violations of this subchapter shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her designee in the name of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 209, 24 DCR 3341.)

Prior Codifications. — 1981 Ed., § 6-2119. legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 2-22. — For

PART C.

CHILD AND FAMILY SERVICES AGENCY.

§ 4-1303.01. Establishment and purposes. [Repealed].

Repealed.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 301, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 2(b), 42 DCR 4; Apr. 4, 2001, D.C. Law 13-277, § 2(k), 48 DCR 2043.)

Prior Codifications. — 1981 Ed., § 6-2121. 1973 Ed., § 6-2131.

Emergency legislation. — For temporary (90 day) enactments, see §§ 5192, 5193 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactments, see §§ 5192, 5193 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactments, see §§ 5192, 5193 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 10-227. — For legislative history of D.C. Law 10-227, see Historical and Statutory Notes following § 4-1301.09.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02

Short title. — Short title: Section 5192 of D.C. Law 16-192 provided that subtitle M of title V of the act may be cited as the “Assessment of District Programs to Prevent Child Abuse and Neglect Act of 2006”.

Delegation of Authority. — Delegation of authority pursuant to title XXIII (Section 2352(a)) of Public Law 97-35, the “Omnibus Budget Reconciliation Act, to Deliver Social Services Block Grant Funded Homemaker Services for Individuals and Families who are in Need of or Receiving Protective Services”, see Mayor’s Order 97-101, May 28, 1997 (44 DCR 3529).

Editor’s notes. — Sections 5192 and 5193 of D.C. Law 16-192 provided:

“Sec. 5192. Definitions.

“For the purposes of this subtitle, the term:

“(1) ‘Primary prevention’ means activities and services provided to families that are de-

signed to prevent or reduce the prevalence of child abuse and neglect before signs of abuse or neglect may be present.

"(2) 'Secondary prevention' means activities and services provided to persons identified by etiological studies because of their propensity to abuse or neglect children in their care. Secondary prevention strategies target children who are identified as being at risk of abuse or neglect and are designed to intervene at the earliest warning signs of abuse or neglect.

"Sec. 5193. Status of abuse and neglect prevention programs.

"(a) The Mayor shall convene a working group to assess child abuse and neglect prevention programs in the District. The working group shall:

"(1) Take an inventory of all current public and private programs for the prevention of child abuse and neglect, including:

"(A) All primary prevention programs servicing the District;

"(B) All secondary prevention programs servicing the District;

"(C) All sources of local, federal, and private funding for each program; and

"(D) A determination of whether each program's services are evaluated for effectiveness; and

"(2) Perform a gap analysis to identify where these programs are:

"(A) Meeting, or failing to meet, the primary prevention needs of the District;

"(B) Meeting, or failing to meet, the secondary prevention needs of the District; and

"(C) Duplicating services identified in the inventory.

"(b) The inventory and gap analysis shall be completed, submitted to the Council, and made available to the public no later than December 31, 2006."

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1303.01a. Establishment and purposes of Child and Family Services Agency.

(a) There is established as a separate Cabinet-level agency, subordinate to the Mayor, the Child and Family Services Agency.

(b) The Agency shall have as its functions and purposes:

(1) Providing services that prevent family dissolution or breakdown, to avoid the need for protective services or out-of-home placements;

(2) Encouraging the reporting of child abuse and neglect;

(3) Receiving and responding to reports of child abuse and neglect;

(3A) Assessing child and family strengths and needs in response to reports of abuse and neglect;

(4) Removing children from their homes or other places, when necessary;

(5) Conducting a social service investigation of child abuse and neglect cases, immediately notifying the Metropolitan Police Department when the commission of a crime is suspected or when any person has been physically injured or placed at risk for physical injury, and cooperating with the criminal investigation;

(6) Safeguarding the rights and protecting the welfare of children whose parents, guardians, or custodians are unable to do so;

(7) Offering appropriate, adequate, and, when needed, highly specialized, diagnostic and treatment services and resources to children and families when there has been a supported finding of abuse or neglect;

(8) Ensuring the protection of children who have been abused or neglected from further experiences and conditions detrimental to their healthy growth and development;

(9) Providing parenting classes or family counseling and other services on behalf of the child designed to help parents recognize and remedy the conditions harmful to the child and to fulfill their parental roles more adequately;

(10) Obtaining substitute care for a child whose parents are unable, even with available help, to meet the child's minimum needs and, where appropriate, providing services to the family of such a child that are aimed at safely reuniting the family as quickly as possible; and

(11) Ensuring the timely permanent placement of the child consistent with the concurrent or alternative plan where reunification is not possible.

(c) Repealed.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 301a, as added Apr. 4, 2001, D.C. Law 13-277, § 2(l), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(h), 52 DCR 2315.)

Effect of amendments. — D.C. Law 15-341, in subsec. (b), added par. (3A); and repealed subsec. (c), which had read as follows: "(c) Not later than January 15, 2002, the Mayor shall recommend to the Council a new name for the Agency other than Child and Family Services Agency."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Child and Family Services Agency Personnel Transfer Emergency Act of 2001 (D.C. Act 14-123, August 3, 2001, 48 DCR 7716).

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Editor's notes. — Section 4 of D.C. Law 13-277 provided: "Sec. 4. Applicability. (a) Except as provided in subsections (b) and (c) of

this section, all provisions of this act shall apply upon the termination of the receivership in the case of LaShawn A., et al. v. Anthony Williams, et al., C.A. No. 89-1754 (TFH), in the United States District Court for the District of Columbia."

"(b) The following sections of this act relating to the Social Services Division of the Superior Court of the District of Columbia shall apply in accordance with the terms and conditions provided in any memorandum of understanding between the Mayor and the Chief Judge of the Superior Court of the District of Columbia, or on or before October 1, 2001, if possible: 2(g)(2), 2(h)(1)(B), 2(h)(2)(B), 2(h)(3)(B), 2(o)(6)(B), 2(t)(1)(B), 2(t)(2)(B), 2(v)(2), 2(v)(3), 3(a)(2)(A), 3(a)(3), 3(a)(4), 3(a)(5), and 3(a)(6).

"(c) Section 3(d) shall apply as of October 1, 2001."

CASE NOTES

ANALYSIS

In general.
Rights of action.
Summary judgment.

In general.

Standard for determining whether District of Columbia officials were liable under § 1983 to children in foster care under supervision of Department of Human Services (DHS) was whether officials had exercised competent professional judgment in administration of district's child welfare system; deliberate indifference was not required. 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Provision of immediate public housing to child and child's family was not "service" within meaning of statute allowing family court, in child neglect proceeding, to order public agency

to provide neglected child with needed service that is within agency's legal authority; agency which provided public housing was entirely separate from agencies providing assistance to families and children who were victims of child abuse and neglect, contrary interpretation would undermine rules, provisions, and function of that agency, and action exceeded statute's goal of addressing and remedying unsafe domestic environment. D.C. Code 1981, § 16-2320(a)(5). *In re G.G.*, 667 A.2d 1331, 1995 D.C. App. LEXIS 228 (1995).

Prevention of Child Abuse and Neglect Act created special relationship between Child Protective Services Division and narrowly defined class of persons: abused and neglected children; once report of child abuse or neglect is filed, which specifically identifies abused or neglected child, special relationship exists between District and specifically identified child or children, so that action can be maintained against District of Columbia for breach of duty. D.C. Code 1981, §§ 6-2102, 6-2121(a), 6-2122(a, c, e). *Turner v. District of Columbia*,

532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

Rights of action.

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. LaShawn A. by Moore v. Kelly, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

District of Columbia's Youth Residential Facilities Licensure Act permits children in foster

care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to "the care" of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357, 3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. LaShawn A. by Moore v. Kelly, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

Summary judgment.

Genuine issue of material fact as to whether Child Protective Services Division of District of Columbia was negligent in failing to remove neglected and abused children from home of father before one died of malnutrition precluded summary judgment in favor of District and Division employees. D.C. Code 1981, §§ 6-2102, 6-2121(a), 6-2122(a, c, e). Turner v. District of Columbia, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

§ 4-1303.02. Organization. [Repealed].

Repealed.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 302, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(m), 48 DCR 2043.)

Prior Codifications. — 1981 Ed., § 6-2122. 1973 Ed., § 6-2132.

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1303.02a. Organization and authority of Child and Family Services Agency.

(a) The Agency shall be administered by a full-time Director appointed by the Mayor and confirmed by the Council. The Director shall be qualified by experience and training to carry out the purposes of this subchapter.

(b) The Director shall report directly to the Mayor.

(c) The Director shall be responsible for all child and family services provided by the Agency, and for monitoring child and family services provided by contract or compact with the Agency.

(d) The Agency shall have sufficient staff, supervisory personnel, and resources to accomplish the purposes of this subchapter, including the capacity to provide emergency and continuing service resources to the children and families covered by this subchapter.

(e) Staff qualifications, caseload levels, and supervision requirements of the Agency in the public and private delivery of services shall be guided by nationally accepted standards of best practice, such as those developed by the

Child Welfare League of America, and shall be published in the District of Columbia Register for public comment.

(f) The Agency shall be the successor in interest to the Child and Family Services Agency under receivership in the case of *LaShawn A., et al. v. Anthony Williams, et al.*, C. A. No. 89-1754 (TFH), in the United States District Court for the District of Columbia. All real and personal property, Career Service and Management Supervisory Service positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, operations, and administration of the Child and Family Services Agency under receivership in *LaShawn A., et al. v. Anthony Williams, et al.*, shall become the property of the Agency on the date of termination of the receivership. The provisions of this subchapter are intended to be consistent with all outstanding orders of the United States District Court in the *LaShawn A., et al. v. Anthony Williams, et al.*, case.

(g) All real and personal property, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, and operations of the Department of Human Services as the "appropriate authority," under § 4-1421 for children who have been abused or neglected, shall become the property of the Agency by October 1, 2001.

(h) All real and personal property, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, and operations of the Department of Health in regulating child placement agencies and foster and group homes for children who have been abused or neglected shall be transferred to the Agency by October 1, 2001.

(i) All records and agreed-upon positions, obligations, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions and operations of the Social Services Division of the Superior Court of the District of Columbia concerning children who have been abused or neglected shall, subject to any approvals required of the United States Congress, be transferred to the Agency in accordance with the terms and conditions provided in any memorandum of understanding between the Mayor and the Chief Judge of the Superior Court of the District of Columbia. This transfer shall be completed on or before October 1, 2001, if possible.

(j) Expired.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 302a, as added Apr. 4, 2001, D.C. Law 13-277, § 2(n), 48 DCR 2043; Mar. 19, 2002, D.C. Law 14-94, § 2, 49 DCR 658.)

Effect of amendments. — D.C. Law 14-94 added subsec. (j).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Child and Family Services Agency Licensure Exemption of Certain Court Personnel Emergency

Amendment Act of 2001 (D.C. Act 14-150, October 23, 2001, 48 DCR 10200).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Agency Licensure Exemption of Certain Court Personnel Legislative Review Emergency

Amendment Act of 2002 (D.C. Act 14-239, January 28, 2002, 49 DCR 1022).

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-94. — Law 14-94, the “Child and Family Services Agency Licensure Exemption of Certain Court Personnel Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-379, which was referred to the Committee on Human Services. The Bill was adopted on first and second

readings on December 4, 2001, and December 18, 2001, respectively. Signed by the Mayor on January 8, 2002, it was assigned Act No. 14-223 and transmitted to both Houses of Congress for its review. D.C. Law 14-94 became effective on March 19, 2002.

Editor’s notes. — Pursuant to its own terms, subsec. (j) expired on October 1, 2004.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Section 7038 of D.C. Law 17-219 repealed section 3 of D.C. Law 14-94.

CASE NOTES

Authority of court monitor.

Court would not modify court monitor’s authority from that previously agreed to in litigation challenging deficiencies in the District of Columbia’s child welfare system, except insofar as the monitor would be relieved of responsibility for submitting the next implementation plan; the monitor’s planning responsibility had not resulted in improper conflicts or delays, nor was the monitor authorized to override local

law, and prospective enforcement of a provision under which the monitor had to approve an annual strategy plan was not inequitable, but the monitor’s authority to enter plan updates was not necessary to facilitate entry of a new plan and raised potential federalism and separation of powers concerns. *LaShawn A. v. Fenty*, 701 F.Supp.2d 84, 2010 U.S. Dist. LEXIS 33491 (2010).

§ 4-1303.03. Duties and powers of the Director.

(a) The Director of the Agency shall have the following duties and powers, any of which may be contracted for, as appropriate, with private or other public agencies:

(1) Receive and investigate reports of abuse or neglect as provided in subchapter II of this chapter, § 4-1301.04 and § 4-1301.06 and assist in the determination of the need for the removal of an abused or neglected child as provided in § 4-1301.07;

(2) Within 90 days of taking a child into custody pursuant to § 4-1303.04(c)(1), return the child to the home or to request that the Office of the Attorney General file a neglect petition in the Family Division of the Superior Court of the District of Columbia;

(3) To maintain a program of treatment and services for families of neglected and abused children including services designed to help children, where safe and appropriate, return to families from which they have been removed;

(4)(A) To prepare annually a plan for child protective services, which shall be reviewed and commented on by the Mayor’s Committee on Child Abuse and Neglect, and which shall:

(i) Describe the Agency’s implementation of the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850), including its organization, staffing, method of operations and financing, and programs and procedures for the receipt, investigation and verification of reports;

(ii) Describe the provisions for the determination of protective services and the treatment of ameliorative service needs, and the provision of such services;

(iii) State the guidelines for referrals to the Family Division of the Superior Court of the District of Columbia; and

(iv) State the provisions for monitoring, evaluation, and planning.

(B) The first plan shall be made available to the public within 90 days of June 27, 2000;

(5) To encourage and assist in the formation of child abuse and neglect teams in hospitals, health and mental health clinics, and other appropriate facilities in the District of Columbia; and

(6) To take whatever additional actions are necessary to accomplish the purposes of the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850).

(7) To provide services to families and children who are eligible for such services, consistent with the requirements of this subchapter, through programs of services to families with children, child protective services, foster care, and adoption;

(8) To maintain a 24-hour, 7-days-a-week intake component to receive reports of suspected child abuse or neglect. The intake component shall be staffed at all times by workers specially trained in intake and crisis intervention and shall maintain:

(A) The capacity for receiving reports and for responding promptly with investigation and emergency services;

(B) A widely publicized telephone number for receiving reports at all times; and

(C) Sufficient telephone lines and qualified staff so that all calls will be answered immediately by a trained worker;

(9) To receive reports of suspected child abuse and neglect;

(10) To conduct a social service investigation of alleged child abuse and neglect cases, including joint investigation with the Metropolitan Police Department;

(11) To provide and maintain, for families of children who have been abused or neglected, a program of treatment and services designed to promote the safety of children, reunification of families, and timely permanent placements;

(12) Repealed.

(13) To provide protective service clients appropriate services necessary for the preservation of families, or to contract with private or other public agencies for the purpose of carrying out this duty. These services may include:

(A) Emergency financial aid;

(B) Emergency caretakers;

(C) Homemakers;

(D) Family shelters;

(E) Emergency foster homes;

(F) Facilities providing medical, psychiatric, and other therapeutic services;

(G) Day care;

(H) Parent aides;

(I) Lay therapists; and

(J) Respite care;

(14) To offer rehabilitative services to the child's family in an effort to reunify the family when a child has been adjudicated a neglected child and placed in foster care;

(15) To immediately, upon court direction, implement the concurrent or alternative plan for the permanent placement of a child when time-limited family reunification services, as defined in § 4-1301.02(19), have failed to reunite a child in foster care with his or her family or when § 16-2354 applies;

(16)(A) To request from a consumer reporting agency that compiles and maintain files on consumers on a nationwide basis and is nationally ranked among the top 3 such agencies, the disclosure of file information pursuant to section 609 of the federal Fair Credit Reporting Act, approved October 26, 1970 (84 Stat. 1131; 15 U.S.C. § 1681g), on behalf of a ward of the Agency under the age of 18 years to determine whether identify theft has occurred, when:

(i) An adoption petition has been filed in the Superior Court of the District of Columbia;

(ii) A motion for guardianship has been filed in the Superior Court of the District of Columbia; or

(iii) The Agency anticipates that the jurisdiction of the Family Court of the Superior Court of the District of Columbia will be terminated.

(B) The Agency shall provide the disclosed file information to the ward's guardian ad litem within 30 days of obtaining the results.

(C) For a ward over the age of 18 years, the Agency shall assist the ward if the ward wants to obtain disclosure of file information prior to the termination of the jurisdiction of the Family Court of the Superior Court of the District of Columbia.

(D) If the Agency determines that disclosed file information indicates that identity theft may have occurred, the Agency shall refer the ward to an approved organization that provides credit counseling to victims of identity theft; provided, that the Agency shall not be responsible for providing assistance beyond a referral.

(E) Within 120 days of May 27, 2010, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 30-day review period, the proposed rules shall be deemed approved;

(17) [Not funded].

(18) To offer employment counseling to foster children, as defined by § 4-342(3), who are ages 18 through 21 years old; and

(19)(A) When requested by a foster child or former foster child who is 18 years of age or older, to provide a letter verifying the person's status as a foster child or former foster child pursuant to § 1-608.01(e-1); and

(B) To record and track the number of foster children or former foster children who request a letter from the Child and Family Services Agency verifying their status pursuant to subparagraph (A) of this paragraph.

(a-1) The Director of the Agency shall have the following additional duties and powers:

(1) To take into custody and place in shelter care, in accordance with subchapter I of Chapter 23 of Title 16, children who have been abused or neglected;

(2) To develop and test innovative models of practice consistent with the purposes of this subchapter;

(3) To develop programs that deliver a broad range of child and family services, including programs that involve the participation of community and neighborhood-based groups in prevention and intervention services;

(3A)(A) To issue grants to community and neighborhood-based groups for programs that deliver prevention and intervention services; provided, that the Director submits an annual report to the Council that includes the recipient, amount, purpose, and term of each grant issued, and a description of outcomes to be achieved and an evaluation of whether or not those outcomes have been achieved for each grant issued.

(B) A grant in excess of \$1 million shall be submitted to the Council for approval in accordance with § 1-204.51.

(4) To facilitate:

(A) Permanent placement of a child, including reunification with original caretakers where such placement is consistent with the child's safety;

(B) Permanent placement with relatives; and

(C) Adoptive placement, as appropriate;

(5) To facilitate meetings for a child in foster care with parents, siblings, relatives, and extended family members;

(6) To provide other programs and services that are consistent with the purposes of this subchapter;

(7) To monitor and evaluate services to and needs of abused and neglected children and their families;

(8) To be the personnel authority for all employees of the Agency, including the exercise of full authority to hire, retain, and terminate personnel, consistent with Chapter 6 of Title 1;

(9) By delegation from the Mayor, and independent of the Office of Contracting and Procurement, to exercise procurement authority to carry out the purposes of the Agency, including contracting and contract oversight, consistent with Unit A of Chapter 3 of Title 2, except § 2-301.05(a), (b), (c), and (e);

(10) Starting not later than October 1, 2001, and notwithstanding the licensing powers and responsibilities given to other District agencies and officials in subchapters I-A and I-B of Chapter 28 of Title 47, to be the exclusive agency to regulate foster and group homes for children who have been abused or neglected and to regulate child placement agencies for these children. For the purposes of this paragraph, the term "regulate" means all licensing, and related functions, except fire inspections and the issuance of certificates of occupancy and all inspections relating to those certificates;

(11) Starting not later than October 1, 2001, to be the "appropriate authority," under § 4-1421 for children who have been abused or neglected;

(12) To adopt regulations to carry out the purposes of this subchapter, in accordance with Chapter 5 of Title 2; and

(13) To take whatever additional actions are necessary to accomplish the purposes of this subchapter.

(b) The Agency, or the person or agency the Agency contracts with, shall:

(1) When a child is at risk of being removed from his or her home because of child abuse or neglect, provide family preservation services designed to help the child remain safely with his or her family;

(2) When a child has been adjudicated a neglected child and committed to the Agency, offer rehabilitative services to the child's family including time-limited family reunification services designed to help the child, where safe and appropriate, return to the family from which he or she has been removed;

(3) When time-limited family reunification services have failed to reunite a committed child and his or her family, take steps to implement a permanent plan of adoption or an alternative permanent plan for the child;

(4) Establish or attempt to secure priority access for protective service clients, by contract or agreement with private organizations, other public agencies, or other Agency units, to services necessary for the preservation or reunification of families which may include, but not be limited to:

(A) Emergency financial aid;

(B) Emergency caretakers;

(C) Homemakers;

(D) Family shelters and housing assistance;

(E) Emergency foster homes;

(F) Mental health services, including facilities providing medical, psychiatric, or other therapeutic services;

(G) Day care;

(H) Parent aides and lay therapists;

(I) Domestic violence services;

(J) Respite care; and

(K) Substance abuse assessment and treatment;

(5) Monitor and evaluate the services to, and the needs of, neglected children and their families;

(6) Compile and publish training materials; and

(7) Provide technical assistance on neglect prevention, identification, and treatment;

(8) Develop and implement, as soon as possible, standards that provide for quality services that protect the safety and health of children, for children who are removed from their homes;

(9) Develop and operate programs of family preservation services, family support services, time-limited family reunification services, and adoption promotion and support services;

(9A) Offer meeting facilitation services for extended family members when appropriate to meet permanency and safety goals as established by the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850);

(9B) Develop procedures and practices for cooperation and joint activities with the Metropolitan Police Department; and

(10) Prepare and submit to the Mayor, the Council, and the public a report to be submitted no later than February 1 of each year; which shall include:

(A) A description of the specific actions taken to implement the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850);

(B) A full statistical analysis of cases including:

(i) The total number of children in care, their ages, legal statuses, and permanency goals;

(ii) The number of children who entered care during the previous year (by month), their ages, legal statuses, and the primary reasons they entered care;

(iii) The number of children who have been in care for 24 months or longer, by their length of stay in care, including:

(I) A breakdown in length of stay by permanency goal;

(II) The number of children who became part of this class during the previous year; and

(III) The ages and legal statuses of these children;

(iv) The number of children who left care during the previous year (by month), the number of children in this class who had been in care for 24 months or longer, the ages and legal statuses of these children, and the reasons for their removal from care; and

(v) The number of children who left care during the previous year, by permanency goal; their length of stay in care, by permanency goal; the number of children whose placements were disrupted during the previous year, by placement type; and the number of children who re-entered care during the previous year;

(C) An analysis of any difficulties encountered in reaching the goal for the number of children in care established by the District;

(D) An evaluation of services offered, including specific descriptions of the family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services including:

(i) The service programs which will be made available under the plan in the succeeding fiscal year;

(ii) The populations which the program will serve; and

(iii) The geographic areas in which the services will be available;

(E) An evaluation of the Agency's performance;

(F) Recommendations for additional legislation or services needed to fulfill the purpose of the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850); and

(G) The comments submitted by a multidisciplinary committee that works to prevent child abuse and neglect and which the Mayor designates to receive and comment on the report.

(11) At all stages of a neglect case, the presumption shall be that a child will attend the same school that he or she would have attended but for the child's removal from his or her home, unless the Agency determines that it is not in the child's best interest to do so. The Agency shall determine the child's

best interest in consultation with parents, when feasible, the child, resource providers, guardian ad litem, and other significant persons.

(c) The Director of the Agency shall implement the Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989, effective March 15, 1990 (D.C. Law 8-87; 37 DCR 50). The Chief of the Division and the Director of the Department of Human Services shall provide the services authorized pursuant to this section to a child who is abused as a result of inadequate care, control, or diminished subsistence due to exposure to drug-related activity.

(d) The safety of the children being served shall be the paramount concern of the Agency in administering and conducting its duties and responsibilities under this section.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 303, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(e), 37 DCR 50; June 27, 2000, D.C. Law 13-136, § 201(d), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(o), 48 DCR 2043; Oct. 26, 2001, D.C. Law 14-42, § 13, 48 DCR 7612; Apr. 12, 2005, D.C. Law 15-341, § 2(i), 52 DCR 2315; Apr. 13, 2005, D.C. Law 15-354, § 95, 52 DCR 2638; July 18, 2008, D.C. Law 17-199, § 2, 55 DCR 6285; May 27, 2010, D.C. Law 18-162, § 2(b), 57 DCR 3029; Sept. 24, 2010, D.C. Law 18-230, § 301(a), 57 DCR 6951; Mar. 12, 2011, D.C. Law 18-312, § 2(b), 57 DCR 12398; July 13, 2012, D.C. Law 19-162, § 2, 59 DCR 5713.)

Prior Codifications. — 1981 Ed., § 6-2123. 1973 Ed., § 6-2133.

Effect of amendments. — D.C. Law 13-136 rewrote this section, which previously read:

“(a) The Chief of the Division shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

“(1) To receive and investigate reports of neglect as provided in § 103 of this act, and §§ 6-2102 and 6-2104 and to assist in the determination of the need for the removal of an abused child as provided in § 6-2105;

“(2) Within 90 days of taking a child into custody pursuant to paragraph (1) of subsection (c) of § 6-2124, to return the child to the home or to request the filing of a neglect petition in the Family Division of the Superior Court of the District of Columbia;

“(3) To maintain a program of treatment and services for families of neglected and abused children;

“(4) To prepare annually a plan for child protective services which shall be reviewed and commented on by the Mayor’s Committee on Child Abuse and Neglect. The plan shall:

“(A) Describe the Division’s implementation of this act, including its organization, staffing, method of operations and financing, and programs and procedures for the receipt, investigation and verification of reports;

“(B) Describe the provisions for the determination of protective and the treatment of ame-

liorative service needs, and the provision of such services;

“(C) State the guidelines for referrals to the Family Division of the Superior Court of the District of Columbia; and

“(D) State the provisions for monitoring, evaluation and planning. The 1st plan shall be made available to the public within 90 days of September 23, 1977;

“(5) To encourage and assist in the formation of child abuse/neglect teams in hospitals, health and mental health clinics and other appropriate facilities in the District of Columbia; and

“(6) To take whatever additional actions are necessary to accomplish the purposes of this act.

“(b) The Director of the Department of Human Services, in addition to his or her other responsibilities, shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

“(1) When a child has been adjudicated a neglected child and committed to the Department of Human Services, to offer rehabilitative services to the child’s family;

“(2) When rehabilitative services have failed to reunite a committed child and his or her family within a reasonable time, to prepare a permanent plan for the child;

“(3) To establish or attempt to secure priority access for protective service clients, by contract

or agreement with private organizations, other public agencies, or other Department of Human Services units, to services necessary for the preservation or reunification of families. These services may include but shall not be limited to:

- “(A) Emergency financial aid;
- “(B) Emergency caretakers;
- “(C) Homemakers;
- “(D) Family shelters;
- “(E) Emergency foster homes;
- “(F) Facilities providing medical, psychiatric or other therapeutic services;
- “(G) Day care;
- “(H) Parent aides/lay therapists;

“(4) To monitor and evaluate services to and needs of neglected children and their families;

“(5) To compile and publish training materials and provide technical assistance on neglect prevention, identification and treatment; and

“(6) To prepare and submit to the Mayor, the Council of the District of Columbia, and the public an annual report which shall include a description of the specific actions taken to implement this act and an evaluation of the Division’s performance. The report shall include a full statistical analysis of case reports received, an evaluation of services offered, recommendations for additional legislation or services needed to fulfill the purposes of this act and the comments submitted by the Mayor’s Inter-agency Interdepartmental Committee on Abuse and Neglect. The 1st report shall be submitted not later than 1 year and 90 days after September 23, 1977.

“(c) The Chief of the Division and the Director of the Department of Human Resources shall implement the Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989. The Chief of the Division and the Director of the Department of Human Services shall provide the services authorized pursuant to this section to a child who is abused as a result of inadequate care, control, or subsistence due to exposure to drug-related activity.”

D.C. Law 13-277 rewrote the section heading which had read: “Duties and Responsibilities”; in subsec. (a), rewrote the lead-in sentence which had read: “The Chief of the Division, or the person or agency that contracts with the department for these services shall:”, in par. (4)(A)(i), substituted “Agency’s” for “Division’s”, and added pars. (7) to (15); added subsec. (a-1); in subsec. (b), in the lead-in sentence, substituted “Agency, or the person or agency the Agency contracts with” for “Director of the Department of Human Services, or the person or agency the department contracts with”, in pars. (2) and (4), substituted “Agency” for “Department of Human Services”, and in par. (10)(E), substituted “Agency’s” for “Division’s”; in subsec. (c), substituted “Director of the Agency” for “Chief of the Division and the Director of the Department of Human Ser-

vices”; and, in subsec. (d), substituted “Agency” for “Department of Human Services”, and deleted “and the Child Abuse Unit of the Social Services Division of the Superior Court of the district of Columbia” preceding “in administering”.

D.C. Law 14-42 validated a previously made technical correction in subsec. (d).

D.C. Law 15-341, in subsec. (a)(1), substituted “abuse or neglect” for “neglect” and substituted “abused or neglected” for “abused”; in subsec. (a)(2), substituted “that the Office of the Attorney General file” for “the filing of”; rewrote subssecs. (a-1)(5), (b)(4)(D), and (b)(4)(F); deleted “and” from the end of (b)(4)(G); added subssecs. (b)(4)(I), (J), and (K); deleted “and” from the end of (b)(9); added subssecs. (b)(9A) and (9B); rewrote subsec. (b)(10)(B)(iii); deleted “and” from the end of subsec. (b)(10)(B)(iv); and added subsec. (b)(10)(B)(v).

D.C. Law 15-354 repealed par. (12) of subsec. (a) which had read as follows: “(12) To encourage and assist in the formation of child abuse and neglect teams in hospitals, health and mental health clinics, and other appropriate facilities in the District of Columbia;”.

D.C. Law 17-199, in subsec. (a-1), added par. (3A).

D.C. Law 18-162, in subsec. (a), deleted “and” from the end of par. (14); substituted “; and” for a period at the end of par. (15), and added par. (16).

D.C. Law 18-230, in subsec. (a), deleted “and” from the end of par. (15); substituted “; and” for a period at the end of par. (16), and added par. (17).

D.C. Law 18-312 added subsec. (b)(11).

D.C. Law 19-162 added subssecs. (a)(18) and (19).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201(d) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

For temporary (225 day) amendment of section, see § 2 of Child and Family Services Grant-making Temporary Amendment Act of 2006 (D.C. Law 16-193, March 2, 2007, law notification 54 DCR 2491).

For temporary (225 day) amendment of section, see § 2 of Child and Family Services Grant-making Temporary Amendment Act of 2007 (D.C. Law 17-105, February 2, 2008, law notification 55 DCR 4257).

Emergency legislation. — For temporary provisions transferring to the Mayor the discretionary authority for creating monetary obligations and approving expenditures in the District of Columbia’s Aid to Families With Dependent Children, Medicaid, and child abuse and neglect/foster care programs that Reorganization Plan No. 2 of 1979, Reorganization

Plan No. 3 of 1986, and the Prevention of Child Abuse and Neglect Act of 1977 vested in the Department of Human Services, see § 2 of the Reorganization No. 2 of 1995 to Transfer to the Mayor Certain Discretionary Authority Vested in the Department of Human Services Emergency Act of 1995 (D.C. Act 11-103, July 21, 1995, 42 DCR 4012).

For temporary (90-day) amendment of section, see § 201(d) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 201(d) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 201(d) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 4(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of section, see § 4(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

For temporary (90 day) amendment of section, see § 13 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Grant-making Emergency Amendment Act of 2006 (D.C. Act 16-450, July 21, 2006, 53 DCR 6493).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Grant-making Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-522, October 27, 2006, 53 DCR 9120).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Grant-making Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-668, December 28, 2006, 54 DCR 1144).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Grant-making Emergency Amendment Act of 2007 (D.C. Act 17-167, October 19, 2007, 54 DCR 10976).

For temporary (90 day) amendment of section, see § 2 of Child and Family Services Grant-making Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-247, January 23, 2008, 55 DCR 1251).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 8-87. — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 4-1301.06a.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 14-42. — Law 14-42, the “Technical Correction Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 4-204.55.

Legislative history of Law 17-199. — Law 17-199, the “Child and Family Services Grant-Making Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-250 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-396 and transmitted to both Houses of Congress for its review. D.C. Law 17-199 became effective on July 18, 2008.

Legislative history of Law 18-162. — For Law 18-162, see notes following § 4-1303.03.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Legislative history of Law 18-312. — For history of Law 18-312, see notes under § 4-1301.02.

Legislative history of Law 19-162. — Law 19-162, the “Foster Care Youth Employment Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-691, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 17, 2012, and May 1, 2012, respectively. Signed by the Mayor on May 16, 2012, it was assigned Act No. 19-372 and transmitted to both Houses of Congress for its review. D.C. Law 19-162 became effective on July 13, 2012.

References in text. — The “Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989”, referred to in (c), is D.C. Law 8-87.

Delegation of Authority. — Delegation of Authority to the Child and Family Services Agency under Section 303(a)(16)(E) of the Prevention of Child Abuse and Neglect Act of 1977,

see Mayor's Order 2010-154, September 17, 2010 (57 DCR 8543).

Editor's notes. — Directives and Redelelegation of Authority to Assure the Continued Operation of the Aid to Families with Dependent Children, Medicaid and Child Abuse-and-Neglect/Foster Care Programs During Fiscal Year 1995: See Mayor's Order 95-115, August 31, 1995.

For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Section 701 of D.C. Law 18-230 provided: "Sec. 701. Applicability. Title III of this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Title III of Law 18-230 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by title III of Law 18-230, are not in effect.

CASE NOTES

In general.

Children in foster care under supervision of District of Columbia Department of Human Services (DHS) had liberty interest in reasonably safe placements in which they would not be harmed; this right was not limited to safety from physical harm, and extended to safety from psychological and emotional harm. D.C. Code 1981, §§ 3-802(a), 6-2102(b), 6-2107, 6-2123; U.S. Const. Amend. 5; 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Superior Court Neglect Rules, requiring agency to provide report to trial court including plan to prepare child for independent living, and requiring judicial officer to enter order stating what services, supervision, and support child should be provided by agency, together

with municipal regulation requiring independent living program to create discharge plan for departing residents that included supports and resources, did not authorize trial court to issue order requiring Child and Family Services Agency (CFSA) to pay directly to neglected child on his twenty-first birthday, after independent living program in which child had been placed by CFSA closed three weeks prior to his emancipation, apparently relegating child to homeless shelter, \$1,800 in "emancipation funds" which had allegedly been promised child by program, inasmuch as "support" could not mean money paid to neglected child for use after his emancipation, when he was beyond CFSA's supervision, because that interpretation would conflict with Prevention of Child Abuse and Neglect Act of 1977 (PCANA). In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

§ 4-1303.03a. Provision of neighborhood-based services; partnerships with neighborhood groups.

(a) To implement the Director's authority to deliver child and family services pursuant to § 4-1303.03(a-1)(3), the Agency may financially support, in cooperation with other public and private agencies, a program of neighborhood-based services to families with children to meet permanency and safety goals set forth in the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850).

(b) Any program of neighborhood-based services to families with children that the Agency supports shall:

(1) Give communities, through neighborhood-based collaboratives or other organizations, the maximum opportunity to design and deliver, or arrange for the delivery of, child welfare services consistent with:

(A) The health and safety of the child;

(B) The policies and programs of the Agency; and

(C) The implementation plan in the *LaShawn v. Williams* case while it is in effect; and

(2) Contain measurable performance outcomes by which the programs will be evaluated in conjunction with data provided by the Agency, including:

- (A) The numbers of children and families referred for services;
- (B) The number of children and families provided services, along with a breakdown of the particular services provided;
- (C) Subsequent referrals of children and families served by neighborhood-based programs to the Agency's child abuse and neglect reporting line; and
- (D) Subsequent foster care placements for children served by neighborhood-based programs.

(3) The performance outcomes required by paragraph (2) of this subsection shall be included in the annual report to the Mayor, Council, and public required by § 4-1303.03(b)(10), and shall be incorporated into any contract between the Agency and a neighborhood-based service provider.

(c) For the purposes of this section, the term "services to families with children" means:

(1) Assistance to help a family resolve a crisis that is brought on by catastrophe, crime, death, economic deprivation, desertion, domestic violence, lack of shelter, physical or mental illness, or substance abuse, and threatens the safety and welfare of the child;

(2) Family interventions:

(A) To resolve marital and relationship conflict, family conflict, and parent-child relationship problems; and

(B) To teach parenting, and child care and development skills;

(3) Information and referral services to teach families how to locate and use community services, including health care and legal services; and

(4) Home management services to teach the management of household duties and responsibilities, including budgeting skills.

(d) In implementing partnerships with neighborhood groups, the Agency may:

(1) Report to the Mayor and Council on specific services needed but not available in sufficient number to prevent child endangerment;

(2) To the extent possible:

(A) Coordinate for families with children the delivery of day care, health, education, mental health, employment, housing, domestic violence, and other services provided by public and private agencies;

(B) Deliver services through organizations based in the neighborhoods in which the recipients live;

(C) Consult with families served by the Agency to determine appropriate services; and

(3) Share information regarding its program with the Mayor's Advisory Committee on Child Abuse and Neglect and the Mayor's Commission on Violence Against Women.

(e) The Mayor, in consultation with the Agency and in accordance with Chapter 5 of Title 2, may issue rules to implement neighborhood-based programs under this section.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 303a, as added Apr. 12, 2005, D.C. Law 15-341, § 2(j), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

§ 4-1303.03b. Single reporting line.

(a) The Agency shall establish a single reporting line to receive reports of suspected child abuse and neglect.

(b) The single reporting line shall be maintained by the Agency, with the assistance and support of the Metropolitan Police Department, and shall be staffed 24 hours a day, 7 days a week.

(c) Upon receiving reports on the single reporting line, the Agency shall:

(1) Review and screen the reports to collect relevant information from the source of the report; and

(2) Transmit the reports to the entity with responsibility under the laws of the District of Columbia, or the appropriate governmental entity in another jurisdiction, for investigation or provision of services.

(d) The Agency shall provide quarterly summaries to the Mayor and Council regarding the number and types of reports made to the single reporting line.

(e) The Mayor, with the assistance and support of the Agency and the Metropolitan Police Department and in accordance with of Chapter 5 of Title 2, shall issue rules for operating the single reporting line. The rules shall include:

(1) The mechanics and logistics of the single reporting line, including location, staffing, and equipment;

(2) The process for receiving calls, including forms and methods for the recording of information;

(3) The process for the immediate transmittal of calls to the governmental entity responsible for investigation or provision of services;

(4) Procedures for preserving the confidentiality of information and the retention of records; and

(5) Training requirements for persons staffing the single reporting line.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 303b, as added Apr. 12, 2005, D.C. Law 15-341, § 2(k), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

§ 4-1303.03c. Child and Family Services Agency Transportation Fund. [Repealed].

Repealed.

(Sept. 23, 1977, D.C. Law 2-22, § 303c as added Mar. 3, 2010, D.C. Law 18-111, § 5151, 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9065, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 5151 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5151 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-205.19b.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Short title. — Short title: Section 5150 of D.C. Law 18-111 provided that subtitle P of title V of the act may be cited as the “Child and Family Services Transportation Fund Amendment Act of 2009”.

§ 4-1303.03d. Rapid Housing Program assistance.

(a) The Agency shall track and publicly report the number of emancipating youth and families who apply for or are referred for assistance under the Rapid Housing Program, the number of youth and families who are eligible for assistance, and the number of youth and families who receive assistance.

(b) The Agency shall maintain a waiting list of emancipating youth and families who are eligible but cannot receive assistance due to insufficient funds.

(Sept. 23, 1977, D.C. Law 2-22, § 303d as added Mar. 3, 2010, D.C. Law 18-111, § 5181, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5181 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5181 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 4-205.19b.

Short title. — Short title: Section 5180 of D.C. Law 18-111 provided that subtitle S of title V of the act may be cited as the “Child and Family Services Rapid Housing Assistance Amendment Act of 2009”.

§ 4-1303.03e. Behavioral health screening and assessment requirements.

(a) All children in the custody of the Agency shall, to the extent that it is not inconsistent with a court order, receive a behavioral health screening and, if necessary, a behavioral health assessment within 30 days of initial contact with the Agency or a placement disruption. Through rulemaking, the Mayor may reduce the number of days within which a behavioral health screening and behavioral health assessment are required.

(b) The Agency shall connect all children who are assessed as being in need of behavioral health care to an appropriate behavioral health service.

(c) The Agency shall provide the behavioral health resource guide for parents and legal guardians and the behavioral health resource guide for youth created pursuant to § 7-1131.18 to families of children in Agency custody.

(Sept. 23, 1997, D.C. Law 2-22, § 303e, as added June 7, 2012, D.C. Law 19-141, § 505(b), 59 DCR 3083.)

Emergency legislation. — For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 4-1301.02.

Editor's notes. — Section 601 of D.C. Law

19-141 provided: "Sec. 601. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

§ 4-1303.04. Services authorized; custodial placement; removal of child.

(a) Repealed.

(b) When an investigation indicates that a child has been left alone or with inadequate supervision, the Agency is authorized to make a temporary custodial placement of the child; provided, that:

(1) Notice is left for the parent or custodian which shall state the procedure for reclaiming the child;

(2) Efforts continue to locate the parent;

(3) The child is returned forthwith upon the request of the parent or custodian, unless there is additional evidence of immediate danger to the child and police action is taken pursuant to § 16-2309(3) or (4); and

(4) A complaint alleging neglect is filed with the Superior Court of the District of Columbia:

(A) At the end of 5 days if the parent or custodian fails to claim the child within that time; or

(B) Immediately upon the discovery of additional evidence of immediate danger to the child.

(c) When an investigation made pursuant to § 4-1301.04 or § 4-1301.05 indicates that a child is an abused or a neglected child and when it has been determined that the child cannot be adequately protected by any of the services set forth in § 4-1303.03(a)(7) or (b) of this section or by any other services, the Director of the Agency is authorized to:

(1) Remove the child with the consent of the parent, guardian, or other person acting in loco parentis;

(2) Request the Corporation Counsel of the District of Columbia to petition the Family Division of the Superior Court of the District of Columbia for a finding of abuse or neglect and, where appropriate, the removal of the child; and

(3) Request the police to remove the child when the consent of a parent, guardian or other custodian cannot be obtained and the need to protect the child does not allow sufficient time to obtain a court order.

(Sept. 23, 1977, D.C. Law 2-22; title III, § 304, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 2(c), 42 DCR 4; Apr. 4, 2001, D.C. Law 13-277, § 2(p), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(l), 52 DCR 2315.)

Section references. — This section is referred to in § 4-1303.03.

Prior Codifications. — 1981 Ed., § 6-2124. 1973 Ed., § 6-2134.

Effect of amendments. — D.C. Law 13-277 repealed subsec. (a); in subsec. (b), substituted "Agency" for "Division"; in subsec (c), substituted "§ 4-1303.03(a)(7) or (b) of this section"

for "subsection (a) or (b) of this section", substituted "Director of the Agency" for "Chief of the Division", and in par. (2), substituted "abuse or neglect" for "neglect". Prior to repeal subsec. (a) read:

"(a) When an investigation made pursuant to §§ 4-1301.04 and 4-1301.05 indicates that a child is an abused or neglected child and in

need of services, the Chief of the Division is authorized to provide or secure any necessary services which may include:

- "(1) Emergency financial aid;
- "(2) Temporary 3rd-party placement with responsible neighbors or relatives for the child and his or her siblings: Provided, that the person with whom the child is placed shall not be considered an agent of the Department of Human Services;
- "(3) Emergency caretaker(s) who enter the home and provide temporary care for the child and his or her siblings in appropriate cases, when the consent of the parent or other custodian cannot be obtained, notwithstanding the provisions of the Act of March 3, 1901, as amended (31 Stat. 1324);
- "(4) The placement of homemakers in the home to maintain the child and his or her siblings or to assist the parent or other caretaker in discharging his or her responsibilities to the child;
- "(5) Day care for the child and his or her siblings;
- "(6) Counselling services for the child and his or her family;

"(7) Medical evaluation and/or emergency treatment of the child by a qualified physician; and

"(8) Other appropriate services or resources available in the community including, but not limited to, parenting classes and family counseling."

D.C. Law 15-341, in subsec. (b), substituted "inadequate supervision" for "inadequate supervision and a 3rd-party placement cannot be made".

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 10-227. — For legislative history of D.C. Law 10-227, see Historical and Statutory Notes following § 4-1301.09.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1301.02.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

CASE NOTES

In general.

Child did not have due process right to protection by district from private abuse or neglect; by codifying procedures for investigating child abuse and neglect reports, district did not assume constitutional obligation to protect child from such abuse and neglect. U.S. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Even if child had constitutionally protected interest in protection by district from private abuse or neglect as result of district's codification of procedures for investigating reports of child abuse and neglect, district tort law provided adequate postdeprivation remedy to satisfy requirement of due process. U.S.C. Const.Amend. 14; D.C. Code 1981, §§ 6-2102(b), 6-2103(c). *Doe by Fein v. District of*

Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

§ 4-1303.05. Medical treatment authorized.

When the Agency has physical custody of a child pursuant to § 4-1303.03 or pursuant to § 16-2313 or § 16-2320, it may:

(1) Authorize a medical evaluation or emergency medical, surgical, or dental treatment, or authorize an outpatient psychiatric evaluation or emergency outpatient psychiatric treatment, at any time; and

(2) Authorize non-emergency outpatient medical, surgical, dental or psychiatric treatment, or autopsy, when reasonable efforts to consult the parent have been made but a parent cannot be consulted.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 305, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(q), 48 DCR 2043.)

Prior Codifications. — 1981 Ed., § 6-2125. 1973 Ed., § 6-2135.

Effect of amendments. — D.C. Law 13-277, in the lead-in sentence, substituted “Agency has physical custody of a child pursuant to § 4-1303.03” for “Department of Human Services has physical custody of a child pursuant to subsection (b) or (c) of § 4-1303.04”; rewrote par. (1); and, in par. (2), inserted “out-patient”. Prior to amendment, par. (1) read:

“(1) Authorize a medical and psychiatric eval-

uation and/or emergency medical, surgical, dental, or psychiatric treatment at any time; and”

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1301.02.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1303.06. Confidentiality of records and information.

(a) Information acquired by staff of the Child and Family Services Agency that identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons shall be considered confidential and may be released or divulged only for:

- (1) Purposes relating to the identification of abuse or neglect;
- (2) The identification of service needs or resources;
- (3) The securing or provision of treatment or direct services for the child or individual identified;
- (4) The investigation or review of child fatalities by representatives of the Child Fatality Review Committee, established pursuant to § 4-1371.03; or
- (5) For the purposes of and in accordance with Chapter 2A of Title 7 [§ 7-241 et seq.].

(b) Persons or agencies who are not covered by confidentiality requirements comparable to those in subsection (a) of this section, to whom information is released pursuant to this section, § 4-1302.03, or § 4-1302.04 must sign a statement that they will not divulge such confidential information for purposes unrelated to the purposes of treatment, identification or evaluation.

(c) Repealed.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 306, as added Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678; June 27, 2000, D.C. Law 13-136, § 201(e), 47 DCR 2850; Oct. 3, 2001, D.C. Law 14-28, § 4618, 48 DCR 6981; Feb. 13, 2002, D.C. Law 14-69, § 2(a), 48 DCR 11072; Dec. 4, 2010, D.C. Law 18-273, § 202, 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2126. 1973 Ed., § 6-2136.

Effect of amendments. — D.C. Law 13-136 added subsec. (c).

D.C. Law 14-28, in subsec. (a), inserted “or the investigation or review of child fatalities by representatives of the Child Fatality Review Committee, established pursuant to § 4-1317.03”.

D.C. Law 14-69 repealed subsec. (c) which had read:

“(c) Notwithstanding subsection (a) of this

section, the Mayor or the Director of the designated Child and Family Services Agency may disclose to the public the findings or information about a case of child abuse or neglect which has resulted in a child’s fatality or near fatality. Nothing may be disclosed that would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person or which may compromise the integrity of a Mayor’s investigation or a civil or criminal investigation or judicial proceeding. If the Mayor denies access to specific information

on this basis, the requesting entity may seek disclosure of the information through the Superior Court. The name or any other information identifying the person or entity who referred the child to the Department of Human Services shall not be released to the public."

D.C. Law 18-273 rewrote subsec. (a), which had read as follows: "(a) Information acquired by staff of the Social Rehabilitation Administration of the Department of Human Services which identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons or other individuals shall be considered confidential and may be released or divulged only for purposes relating to the identification of abuse or neglect, the identification of service needs or resources, the securing or provision of treatment or direct services for the child or individual identified, or the investigation or review of child fatalities by representatives of the Child Fatality Review Committee, established pursuant to § 4-1371.03."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 18 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 2(a) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Temporary Amendment Act of 2000 (D.C. Law 13-215, April 3, 2001, law notification 38 DCR 3457).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(a) of the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Emergency Amendment Act of 2000 (D.C. Act 13-428, August 14, 2000, 47 DCR 7451).

For temporary (90 day) repeal of section, see § 2(a) of the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-491, December 18, 2000, 48 DCR 57).

For temporary (90 day) amendment of section, see § 2(a) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) amendment of section, see § 18 of Child Fatality Review Com-

mittee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 18 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) amendment of section, see § 2(a) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of 2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) amendment of section, see § 2(a) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

For temporary (90 day) amendment of section, see § 202 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 202 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 3-29. — Law 3-29, the "Confidentiality and Disclosure of Records on Abused and Neglected Children Act of 1979," was introduced in Council and assigned Bill No. 3-159, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed by the Mayor on August 1, 1979, it was assigned Act No. 3-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1301.02.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

Legislative history of Law 14-69. — Law 14-69, the "Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-181, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on November 19, 2001, it was assigned Act No. 14-182 and transmitted to both Houses of Congress for its review. D.C. Law 14-69 became effective on February 27, 2002.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 4-209.04.

§ 4-1303.07. Unauthorized disclosure of records.

Whoever willfully discloses, receives, makes use of or knowingly permits the

use of confidential information concerning a child or individual in violation of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 307, as added Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678.)

Prior Codifications. — 1981 Ed., § 6-2127. 1973 Ed., § 6-2137.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Temporary Amendment Act of 2000 (D.C. Law 13-215, April 3, 2001, law notification 38 DCR 3457).

Emergency legislation. — For temporary (90-day) addition of § 6-2128 1981 Ed., see § 2(b) of the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Emergency Amendment Act of 2000 (D.C. Act 13-428, August 14, 2000, 47 DCR 7451).

For temporary (90 day) addition of § 4-1303.08, see § 2(b) of the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-491, December 18, 2000, 48 DCR 57).

For temporary (90 day) addition of § 4-1303.08, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

Legislative history of Law 3-29. — For legislative history of D.C. Law 3-29, see Historical and Statutory Notes following § 4-1303.06.

CASE NOTES

In general.

Neglected child's right to confidentiality could be waived in his own interest so that he could appear on television program which was designed to bring potentially adoptable children to attention of prospective adoptive parents, and trial court was not precluded by the confidentiality statutes and rules from autho-

rizing Department of Human Services (DHS), who had custody of child whose unwed father's parental rights remained intact, to take, on child's behalf, actions which child, if he was of age, would surely have the right to take for himself. *In re T.W.*, 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

§ 4-1303.08. Voluntary Foster Care Registry. [Not funded].

[Not funded].

(Sept. 23, 1977, D.C. Law 2-22, title III, § 308, as added Sept. 24, 2010, D.C. Law 18-230, § 301(b), 57 DCR 6951.)

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Editor's notes. — Section 701 of D.C. Law 18-230 provided: "Sec. 701. Applicability. Title III of this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Title III of D.C. Law 18-230 has not been included in an approved budget and financial plan. There-

fore, the provisions of this section, enacted by title III of D.C. Law 18-230, are not in effect.

The Budget Director of the Council of the District of Columbia has determined, as of October 10, 2012, that the fiscal effect of Title III of D.C. Law 18-230 has been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by title III of D.C. Law 18-230, are in effect. Section 110 of emergency D.C. Act 19-482 repealed section 701 of D.C. Law 18-230.

§ 4-1303.09. Voluntary Foster Care Registry Fund. [Not funded].

[Not funded].

(Sept. 23, 1977, D.C. Law 2-22, title III, § 309, as added Sept. 24, 2010, D.C. Law 18-230, § 301(b), 57 DCR 6951.)

Effect of amendments. — D.C. Law 18-230 added this section.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Editor's notes. — Section 701 of D.C. Law 18-230 provided: "Sec. 701. Applicability. Title III of this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Title III of D.C. Law 18-230 has not been included in

an approved budget and financial plan. Therefore, the provisions of this section, enacted by title III of D.C. Law 18-230, are not in effect.

The Budget Director of the Council of the District of Columbia has determined, as of October 10, 2012, that the fiscal effect of Title III of D.C. Law 18-230 has been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by title III of D.C. Law 18-230, are in effect. Section 110 of emergency D.C. Act 19-482 repealed section 701 of D.C. Law 18-230.

PART C-i.

PUBLIC DISCLOSURE OF FINDINGS AND INFORMATION IN CASES OF CHILD FATALITY OR NEAR FATALITY.

§ 4-1303.31. Definitions.

For the purposes of this part, the term:

(1)(A) "Agency" shall have the same meaning provided in § 2-502(3), except that the term "agency" shall include:

(i) The Social Services Division of the Superior Court of the District of Columbia; and

(ii) The Child and Family Services Agency, whether under the administrative control of the Mayor or the court-appointed receiver.

(B) The term "agency" does not include the executive branch of the federal government, its agencies, officials, and employees, or the Child Fatality Review Committee.

(2) "Child fatality" means:

(A) The death of a child as a result of child abuse, neglect, or maltreatment, as certified by a physician, or the Chief Medical Examiner of the jurisdiction in which the child died or where the autopsy was performed; or

(B) The death of a child where the Chief Medical Examiner cannot rule out child abuse, neglect, or maltreatment as contributing to the cause of death.

(3) "Disclosing official" means:

(A) The Mayor or such other official or officials of the District as the Mayor may from time to time designate in writing to perform the functions under this part; and

(B) The Director of the Child and Family Services Agency.

(4) "District" means the District of Columbia.

(5) "Findings and information related to a child fatality or near fatality" means:

(A) All public records in the possession of any officer or agency of the District that pertain to a child fatality or near fatality, or that are compiled, received, or created in the course of any investigation, assessment, or review conducted in connection with a child fatality or near fatality; and

(B) A written summary that includes, to the extent possible, all of the following information pertaining to a child fatality or near fatality:

(i) The name of the child, except that the name of the child shall not be disclosed in a case of a near fatality unless the name has otherwise previously been disclosed;

(ii) The name of the parent or other person legally responsible for the child, except that the name of the parent or other person legally responsible for the child shall not be disclosed in a case of a near fatality unless the name has otherwise previously been disclosed;

(iii) Confirmation of the receipt of all reports, accepted or not accepted, by an agency of the District for investigation or assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations or assessments were conducted; the results of the investigations or assessments; a description of the conduct of the most recent investigation or assessment and the services rendered; and a statement of the basis for the agency's determination;

(iv) The basis for any finding of either abuse or neglect, including the results of any review of a community child protection team or any public agency;

(v) Identification of child protective or other services provided to or any actions taken by any agency regarding the child, including the dates, outcomes, and results of any services provided and any actions taken;

(vi) Any actions taken by any agency in response to reports or allegations of abuse or neglect of the child, including the dates, outcomes, and results of any actions taken; and

(vii) Other pertinent information concerning the circumstances of any abuse or neglect of the child and the investigation of such abuse or neglect.

(6) "Near fatality" means a child in serious or critical medical condition as a result of child abuse, neglect, or maltreatment, as certified by a physician.

(7) "Personal or private information" means information about an individual's personal relationships, sexual preference or conduct, economic or financial needs or status, physical or mental health, substance use or abuse, work or school records, religious beliefs, or political opinions, unless such personal or private information is related to the cause of the child fatality or near fatality.

(8) "Public record" shall have the same meaning provided in § 2-502(18).

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 331, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072; Mar. 13, 2004, D.C. Law 15-105, § 34(c), 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105 validated previously made technical corrections.

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near

Fatality Second Emergency Amendment Act of 2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

§ 4-1303.32. Disclosure of findings and information.

(a)(1) Notwithstanding any other provision of law, a disclosing official shall upon written request by any person, and may upon his or her own initiative, disclose to the public the findings and information related to a child fatality or near fatality, except as provided in paragraph (2) of this subsection.

(2) Paragraph (1) of this subsection shall not apply to the disclosure of any portion of the findings or information if disclosure of that portion would likely:

(A) Endanger the life, physical safety, or physical or emotional well-being of the child who is the subject of the findings and information or a child who is a sibling of such child or has shared the same household as such child;

(B) Endanger the life or physical safety of any person;

(C) Interfere with an ongoing law enforcement investigation or proceeding pertaining to the child fatality or near fatality;

(D) Deprive a person of a right to a fair trial or an impartial adjudication;

(E) Disclose the identity of any person who reported suspected abuse, neglect, or maltreatment to the Metropolitan Police Department or the Child and Family Services Agency, or the identity of any confidential law enforcement source in a criminal proceeding pertaining to the child fatality or near fatality;

(F) Disclose the identity of a birth parent of a child, if the child has been adopted and there has been no contact between the child and the birth parent immediately prior to the fatality or near fatality; or

(G) Disclose personal or private information.

(3) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under paragraph (2) of this subsection.

(b)(1) The disclosing official shall either make the requested findings or information related to a child fatality or near fatality accessible to the person making the request or send the person a letter of denial explaining the disclosing official's determination to withhold all or any portion of the requested findings or information within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the disclosing official. A letter of denial shall contain at least the following:

(A) The specific reasons and legal authority for the denial or decision to withhold;

(B) Notification to the requestor of any right to appeal; and

(C) A description of the documents withheld by the disclosing official.

(2) In unusual circumstances, the time limit provided in paragraph (1) of this subsection may be extended by written notice to the person making the request setting forth the reasons for extension and expected date for determination. The extension shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

(A) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(B) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

(3) Except as provided in paragraph (2) of this subsection, any failure on the part of the disclosing official to comply with a request under this section within the time provision of paragraph (1) of this subsection shall be deemed a denial of the request, and the person making the request shall be considered to have exhausted his or her administrative remedies with respect to that request.

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 332, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072.)

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of

2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

§ 4-1303.33. Civil action to compel disclosure.

(a) Any person who has submitted a request to the disclosing official to release findings and information under § 4-1303.32, and whose request has been denied in whole or in part, may bring a civil action in the Superior Court of the District of Columbia ("Superior Court") to compel the disclosing official to release the findings and information as requested.

(b) A suit filed under this section shall be set for hearing by the Superior Court at the earliest practicable time and shall be given all possible expedited treatment.

(c) In any suit filed under this section, the Superior Court may order the production of any findings or information improperly withheld from the person seeking disclosure.

(d) The burden is on the disclosing official to sustain his or her action. The

court shall determine the matter de novo, and may examine the contents of the requested findings and information in camera to determine whether the findings and information, or any part thereof, shall be withheld under § 4-1303.32(a)(2).

(e) If a person seeking the right to inspect or to receive a copy of findings and information prevails in whole or in part in a civil action filed under this section, he or she may be awarded reasonable attorney fees and other costs of litigation.

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 333, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072.)

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of

2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

§ 4-1303.34. Immunity.

The District, the disclosing official, and any agencies, committees, officials, officers, employees, or attorneys of the District authorized by the disclosing official to assist the disclosing official with his or her responsibilities and duties under this part shall have full immunity from any civil or criminal liability relating to a decision made in good faith to disclose findings and information related to a child fatality or near fatality under this part.

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 334, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072.)

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of

2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

§ 4-1303.35. Freedom of Information Act requests.

Nothing in this part shall limit or restrict any right of access or disclosure that any person may have under subchapter II of Chapter 5 of Title 2 ("Freedom of Information Act"). Section 4-1303.06 shall not provide a basis for denying any request under the Freedom of Information Act for any public record pertaining to a child fatality or near fatality.

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 335, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072.)

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of

2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

§ 4-1303.36. Rules.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this part. The rules issued pursuant to this section shall be transmitted to the Council within 30 days of February 13, 2002, for a 45-day period of Council review (excluding days of Council recess). If the Council does not approve or disapprove the rules by resolution within the 45-day review period, the rules shall be deemed approved.

(Sept. 23, 1977, D.C. Law 2-22, title IIIA, § 336, as added Feb. 13, 2002, D.C. Law 14-69, § 2(b), 48 DCR 11072.)

Emergency legislation. — For temporary (90 day) addition of this section, see section 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-6, February 13, 2001, 48 DCR 2479).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Second Emergency Amendment Act of

2001 (D.C. Act 14-191, November 29, 2001, 48 DCR 11233).

For temporary (90 day) addition of section, see § 2(b) of Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-286, February 25, 2002, 49 DCR 2317).

Legislative history of Law 14-69. — For Law 14-69, see notes following § 4-1303.06.

PART C-ii.

CITIZEN REVIEW PANEL.

§ 4-1303.51. Establishment of the Citizen Review Panel; purposes; duties.

(a) There is hereby established the Citizen Review Panel, whose purpose is to serve as an external, independent oversight body for the District's child welfare system, evaluating the strengths and weaknesses of District government agencies involved in child protection as well as neighborhood-based services provided by vendors.

(b) The Panel shall examine the policies, practices, and procedures of the Agency and any other District government agency that provides services to children at risk of abuse and neglect, or to children under the care of the

Agency, including, as appropriate, the review of specific child cases. Based on this examination, the Panel shall evaluate the extent to which agencies serving children at risk of abuse or neglect, or children under the care of the Agency, are effectively discharging their child protection responsibilities in accordance with:

(1) The State plan required by section 106(b) of the Child Abuse Prevention and Treatment Act, approved April 25, 1988 (102 Stat. 110; 42 U.S.C. § 5106A(b));

(2) The child protection standards set forth in section 106(b) of the Child Abuse Prevention and Treatment Act, approved April 25, 1988 (102 Stat. 110; 42 U.S.C. § 5106A(b)); and

(3) Any other criteria that the Panel deems important to ensure the protection of children.

(c) The Panel shall solicit public outreach and comment in order to assess the impact of current policies, practices, and procedures of the child welfare system on children and families in the District of Columbia.

(d)(1) The Panel shall submit a report, no later than April 30th of each year, to the Mayor, Council, and Agency, summarizing the Panel's activities and findings during the prior calendar year, containing recommendations on how to improve child welfare services and outcomes in the District of Columbia, and providing information on the progress the District government is making in implementing the recommendations of the Panel.

(2) The Agency shall make the annual report available to the public by providing access to it on its Internet site.

(3) Not later than 6 months after the Panel publishes the annual report, the Agency shall provide a written response that describes whether or how the Agency, in coordination with other government agencies, will implement the Panel's recommendations in order to make measurable progress in improving the child welfare system.

(Sept. 23, 1977, D.C. Law 2-22, title IIIB, § 351, as added Apr. 12, 2005, D.C. Law 15-341, § 2(m), 52 DCR 2315.)

Legislative history of Law 15-341. — Law 15-341, the "Child in Need of Protection Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-389 which was referred to the Committee on Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on Decem-

ber 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-758 and transmitted to both Houses of Congress for its review. D.C. Law 15-341 became effective on April 12, 2005.

§ 4-1303.52. Panel membership.

(a) The Panel shall be comprised of 15 members to be appointed as follows:

(1) Eight members shall be appointed by the Mayor, and

(2) Seven members shall be appointed by the Council by resolution.

(b)(1) Panel members shall be residents of the District.

(2) None of the members shall be employed by the District government.

(3) No more than 2 members appointed by the Mayor, and no more than 2 members appointed by the Council, shall serve as an officer, director, partner,

employee, consultant, or contractor with an organization that provides services to the Agency.

(c) In making their appointments, the Mayor and Council shall establish a Panel that is broadly representative of the community and includes members who have expertise in the prevention and treatment of child abuse and neglect. The Mayor and Council shall seek to include a diversity of professional backgrounds on the panel, such as children's attorneys, child advocates, parents, foster parents, and other consumer representatives, social workers, educators, and health and mental health professionals who are familiar with the child welfare system.

(d) The Mayor's initial 8 appointments shall include 3 members appointed to 3-year terms that begin on April 12, 2005, 3 members appointed to 2-year terms that begin on April 12, 2005, and 2 members appointed to one year terms that begin on April 12, 2005. All subsequent appointments by the Mayor shall be for 3-year terms.

(e) The Council's initial 7 appointments shall include 3 members appointed to 3-year terms that begin on April 12, 2005, 2 members appointed to 2-year terms that begin on April 12, 2005, and 2 members appointed to one-year terms that begin on April 12, 2005. All subsequent appointments by the Council shall be for 3-year terms.

(f)(1) Vacancies in membership shall be filled in the same manner in which the original appointment was made, with the newly appointed member serving the unexpired term of his or her predecessor.

(2) Members may be reappointed to the Panel.

(g) The Mayor shall designate the Chairperson of the Panel and the Council shall designate the Vice Chairperson of the Panel.

(Sept. 23, 1977, D.C. Law 2-22, title IIIB, § 352, as added Apr. 12, 2005, D.C. Law 15-341, § 2(m), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

§ 4-1303.53. Panel procedures; meetings; staff support.

(a)(1) A quorum shall consist of 8 members and the Panel shall develop written bylaws, with the approval of a majority of Panel members, to establish other procedural requirements it considers necessary, including the designation of additional officers.

(2) The Panel may establish such committees as it considers necessary, according to rules set forth in the bylaws.

(3) The Panel may establish written protocols to guide its work in evaluating the policies, practices, procedures, and performance of the child welfare system.

(b)(1) The Panel shall meet not less than once every 3 months, in appropriate meeting space provided by the Agency, at no cost.

(2) Panel meetings shall be open to the public, except that the Panel shall meet in closed session when it is reviewing specific child cases.

(3) Any resolution, rule, act, regulation, or other official action is effective

only if it is taken, made, or enacted at an open meeting as defined in § 1-207.42.

(c)(1) The Panel shall receive staff support from one or more employees of the Agency, as designated by the Director of the Agency.

(2) The Agency shall include in its annual performance-based budget submission to the Mayor and Council, beginning in Fiscal Year 2007, an activity-level line item for the Panel, which will include personal services and non-personal services funding.

(Sept. 23, 1977, D.C. Law 2-22, title IIIB, § 353, as added Apr. 12, 2005, D.C. Law 15-341, § 2(m), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

§ 4-1303.54. Access to information and confidentiality.

(a) The Panel shall have access to data on children and families maintained by District government agencies, including the Agency, the Department of Human Services, the Department of Health, the Department of Mental Health, the Metropolitan Police Department, the Office of the Chief Medical Examiner, and the D.C. Public Schools. The Panel shall also have access to data kept by any private agency or organization that provides or arranges for services or out-of-home placements for children residing in the District of Columbia.

(b) For the purposes of specific case review, the Panel shall have access to:

- (1) Police investigative data;
- (2) Autopsy records and other medical examiner investigative data;
- (3) Hospital, public health, or other medical records of the child;
- (4) Hospital and other medical records of the child's parent that relate to prenatal care;

(5) Records created by human or social service agencies, including the Agency, that provided or provide services to the child or family; and

(6) Personnel data related to an employee's performance in discharging child protection responsibilities.

(c)(1) All information and records generated by the Panel, including statistical compilations and reports, and all information and records acquired by, and in the possession of, the Panel are confidential.

(2) Panel information and records may be disclosed only as necessary to carry out the Panel's duties and purposes.

(3) Statistical compilations and reports of the Panel that contain information that would reveal the identity of any person, other than a person who has consented to be identified, are not public records or information.

(4) Each person attending a Panel meeting shall sign a confidentiality agreement at the beginning of each meeting of the Panel.

(d) Findings and recommendations on the child welfare system required by § 4-1303.51(d) shall be available to the public on request.

(e) Except as permitted by this section, information and records of the Panel shall not be disclosed voluntarily, pursuant to a subpoena, in response to a

request for discovery in any adjudicative proceeding, or in response to a request made under subchapter II of Chapter 5 of Title 2 [§ 2-531 et seq.], nor shall it be introduced into evidence in any administrative, civil, or criminal proceeding.

(f)(1) Whoever discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be subject to a fine of not more than \$1,000.

(2) Violations of this section shall be prosecuted by the Attorney General, or his or her designee, in the name of the District of Columbia.

(3)(A) The Mayor may remove any of his or her appointees from the Panel for violating this section.

(B) The Council may remove, by resolution, any of its appointees from the Panel for violating this section.

(Sept. 23, 1977, D.C. Law 2-22, title IIIB, § 354, as added Apr. 12, 2005, D.C. Law 15-341, § 2(m), 52 DCR 2315.)

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

PART D.

[RESERVED].

PART E.

CRIMINAL RECORDS CHECK.

§ 4-1305.01. Definitions.

For the purposes of this part:

(1) “Adult” means an individual who is at least 18 years of age.

(1A) “Agency” means the Child and Family Services Agency established by § 4-1303.01a.

(2) “Applicant” means a person applying for a criminal records check under this part.

(3) “Conviction” means a plea or verdict of guilty or a plea of nolo contendere.

(4) “Criminal record check” means a search of criminal records to determine whether an individual has a criminal conviction that is performed by the Federal Bureau of Investigation of national records, and by:

(A) The Metropolitan Police Department, if the individual as an adult has resided, worked, or attended school in the District at any time in the past 5 years; or

(B) The state’s law enforcement agency, if the individual as an adult has resided, worked, or attended school outside of the District at any time in the past 5 years.

(5) Repealed.

(6) "Foster family home" means a home described in subchapter XVII of Chapter 2 of this title, or another foster family home in the District of Columbia.

(6A) "Information form" means a written statement in a form established by the Agency that:

(A) Is signed by the individual under penalty of perjury;

(B) Identifies each state in which the individual has resided, worked, or attended school at any time in the past 5 years;

(C) Identifies each felony for which the individual has been convicted as an adult, and the date and state of that conviction;

(D) Identifies each state in which the individual is currently on parole or probation; and

(E) Includes any other information required by the Agency.

(7) "Licensed child-placing agency" means an individual or entity defined as such in § 4-1402.

(8) "Police" means the Metropolitan Police Department of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 501, formerly § 321, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(r), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(n), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(2), 53 DCR 6794; Apr. 24, 2007, D.C. Law 16-306, § 202(a), 53 DCR 8610.)

Effect of amendments. — D.C. Law 13-277 added par. (1A); and repealed par. (5) which had read:

"(5) 'Department' means the District of Columbia Department of Human Services."

D.C. Law 15-341 rewrote par. (4) which had read as follows: "(4) 'Criminal records check' means a search of criminal records, in order to determine whether an individual has a criminal conviction, conducted by the following agencies: (A) The Federal Bureau of Investigation; (B) The police if the individual resides in the District; and (C) Any state law enforcement agency, if the individual resides outside of the District."

D.C. Law 16-191 renumbered the section.

D.C. Law 16-306 rewrote par. (4); and added par. (6A). Prior to amendment, par. (4) read as follows: "(4) 'Criminal records check' means a search of criminal records to determine whether an individual has a criminal conviction that is performed by the Federal Bureau of Investigation of national records, and by: (A) The Metropolitan Police Department individual resides in the District; or (B) The state's law enforcement agency, if the individual resides outside of the District; and (C) The state law enforcement agency in which the individual may have resided or worked, or is believed to have had another connection as an adult."

Emergency legislation. — For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(e) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(e) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(e) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 202(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 202(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 202(a) of Omnibus Public Safety Congressional Review Emergency Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 202(a) of Omnibus Public Safety

Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 13-136. — Law 13-136, the “Adoption and Safe Families Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 16-306. — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.02. Criminal records check required for certain individuals.

The following individuals shall apply for a criminal records check under this part:

- (1) An individual who seeks to be approved or licensed as an adoptive parent by the Agency or by any licensed child-placing agency;
- (2) An individual who seeks to be approved or licensed as a foster parent by the Agency or by any licensed child-placing agency;
- (3) An individual who seeks to be approved as a kinship caregiver or legal guardian by the Agency;
- (4) Except as provided in paragraph (1) of this section, an individual who seeks to become an adoptive parent of a child under Chapter 3 of Title 16;
- (5) Upon order of a judicial officer, an individual with whom a child is placed under § 16-2320(a)(2) or § 16-2320(a)(3)(C); and
- (6) An adult residing in the home of an individual described in paragraphs (1), (2), (3), or (4) of this section or, upon order of a judicial officer, an adult who resides in the home of an individual described in paragraph (5) of this section.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 502, formerly § 322, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(s), 48 DCR 2043; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(3), 53 DCR 6794.)

Effect of amendments. — D.C. Law 13-277 substituted “Agency” for “Department” throughout the section; and, in par. (3), substituted “Agency” for “Division”.

D.C. Law 16-191 renumbered the section.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.03. Application for criminal records check; timing.

(a) Within the time stated in subsection (b) of this section, an applicant shall apply for a criminal records check by submitting to the Agency, licensed child-placing agency, or the police:

(1) A complete set of legible fingerprints taken on standard fingerprint cards by the Agency or the police;

(2) Payment of the fees and costs of the criminal records check as described in § 4-1305.04;

(3) The completed information form; and

(4) Any documentation required to conduct a criminal records check by a state identified in the completed information form.

(b) The application for a criminal records check shall be made:

(1) For an individual described in § 4-1305.02(1), (2), or (3), and for every adult residing in the home of an individual described in § 4-1305.02(1), (2), or (3), as part of the approval or licensure process;

(2) For an individual described in § 4-1305.02(4) and for every adult residing in the home of an individual described in § 4-1305.02(4), before the filing of the petition for adoption, pursuant to D.C. Official Code § 16-305;

(3) For an individual described in § 4-1305.02(5) and for every adult residing in the home of an individual described in § 4-1305.02(5), within 2 business days of entry of the judicial order placing the child in the home;

(4) For every adult who becomes a resident of the home of an individual described in § 4-1305.02(1), (2), (3), or (5) after the child is placed in the home, within 10 calendar days after the adult becomes a resident of the home; and

(5) For every adult who becomes a resident of the home of an individual described in § 4-1305.02(4) after the filing of the petition for adoption, within 10 calendar days after the adult becomes a resident of the home.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 503, formerly § 323, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(t), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(o), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(4), 53 DCR 6794; Apr. 24, 2007, D.C. Law 16-306, § 202(b), 53 DCR 8610.)

Effect of amendments. — D.C. Law 13-277, in subsec. (a), in the lead-in sentence, substituted “Agency” for “Department”, and deleted “the Child Abuse Unit of the Social Services Division of the Superior Court of the district of Columbia,” preceding “the police”.

D.C. Law 15-341, in subsec. (a), deleted “and” from the end of par. (1), substituted “; and” for a period at the end of par. (2), and added par. (3).

D.C. Law 16-191 renumbered the section.

D.C. Law 16-306 rewrote subsec. (a), which had read as follows: “(a) Within the time stated in subsection (b) of this section, an applicant shall apply for a criminal records check by submitting to the Agency or the police: (1) A complete set of legible fingerprin on standard

fingerprint cards by the Agency or the police; (2) Payment of the fees and costs of the criminal records check as described in § 4-1305.04; and (3) A written statement, in a form established by the Agency, that includes the individual’s current and prior residences and employment addresses as an adult, and that authorizes the Agency to obtain the individual’s criminal records from a state in which the individual resided, worked, or is believed to have had another connection as an adult.”

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

For temporary (90 day) amendment of section, see § 2(b) of the Adoption and Safe Fam-

ilies Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of section, see § 2(a) of Adoption and Safe Families Compliance Emergency Amendment⁴ Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

For temporary (90 day) amendment of section, see § 202(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 202(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 202(b) of Omnibus Public Safety Congressional Review Emergency Act of 2007

(D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 202(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.04. Payment of processing fees and costs.

(a) A person who is required to have a criminal records check under this part shall pay for:

(1) The mandatory processing fee required by the Federal Bureau of Investigation for conducting the national criminal records check;

(2) Reasonable administrative costs to the police for accessing the District criminal records history; and

(3) Reasonable administrative costs to the Agency.

(b) The Agency or a licensed child-placing agency may pay for processing fees and costs.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 504, formerly § 324, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(u), 48 DCR 2043; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(5), 53 DCR 6794.)

Effect of amendments. — D.C. Law 13-277 substituted “Agency” for “Department” throughout the section.

D.C. Law 16-191 renumbered the section.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.05. Processing the criminal records check.

(a) The Agency or licensed child-placing agency shall forward complete sets of legible fingerprints taken on standard fingerprints cards by the Agency or licensed child-placing agency to the police or state law enforcement agency.

(b) The police shall:

(1) Access the District criminal records history maintained by the District government;

(2) Transmit all complete sets of legible fingerprints on standard fingerprint cards to the Federal Bureau of Investigation; and

(3) Request the Federal Bureau of Investigation to conduct a national criminal records check and return the results to the police or state law enforcement agency.

(c)(1) Except as provided in paragraph (2) of this subsection, the Agency or licensed child-placing agency shall request the law enforcement agency of each state identified in the completed information form to conduct a state criminal records check and return the results to the Agency or licensed child-placing agency, as appropriate.

(2) If the Agency or licensed child-placing agency has already determined that an individual has a disqualifying conviction, it is not required to make further requests to additional states.

(3) The Agency or licensed child-placing agency may also use interstate databases or systems to conduct a single check for multiple states.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 505, formerly § 325, as added, June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(v), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(p), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(6), 53 DCR 6794; Apr. 24, 2007, D.C. Law 16-306, § 202(c), 53 DCR 8610.)

Effect of amendments. — D.C. Law 13-277 rewrote subsec. (a) which prior thereto read:

“(a) The Department or the Child Abuse Unit of the Social Services Division of the Superior Court of the District of Columbia shall forward complete sets of legible fingerprints taken on standard fingerprint cards by the Department or the Child Abuse Unit to the police.”

D.C. Law 15-341 added subsec. (c).

D.C. Law 16-191 renumbered the section.

D.C. Law 16-306 rewrote subsecs. (a) and (c).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

For temporary (90 day) amendment of section, see § 202(c) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 202(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 202(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 202(c) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.06. Results of the criminal records check.

(a) The provisions of this section shall apply to an individual who seeks to be:

(1) Approved or licensed as an adoptive or foster parent, a legal guardian, or a kinship caregiver;

(2) Permitted to become an adoptive parent under Chapter 3 of Title 16; or

(3) Permitted to have a child placed in the individual's custody upon order of a judicial officer, under § 16-2320(a)(2) or § 16-2320(a)(3)(C).

(b) Except as provided in subsection (d) of this section, an individual shall not be approved, licensed, or permitted as set forth in subsection (a) of this section if it is determined from the criminal records check that the individual, or an adult residing in the home of the individual, has a felony conviction for any of the following offenses or their equivalents:

- (1) Child abuse;
- (2) Child neglect;
- (3) Intrafamily offense, as defined in § 16-1001(8);
- (4) A crime against children, including child pornography; or
- (5) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) Except as provided by subsection (d) of this section, an individual shall not be approved, licensed, or permitted as set forth in subsection (a) of this section if it is determined from the criminal records check that the individual, or an adult residing in the home of the individual, has a felony conviction for any of the following offenses or their equivalents committed within the past 5 years:

- (1) Repealed;
- (2) Physical assault;
- (3) Battery; or
- (4) A drug-related offense.

(d) Notwithstanding the requirements of subsections (b) and (c) of this section, an individual may be approved, licensed, or permitted as set forth in subsection (a) of this section if:

(1) The individual has a felony conviction for any of the offenses listed in subsections (b) and (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children; provided, that any adoption-assistance payments or foster-care-maintenance payments made on behalf of a child to an individual pursuant to this paragraph shall not be made with federal funds provided through Title IV-E of the Social Security Act, approved June 17, 1980 (94 Stat. 500; 42 U.S.C. § 670 et seq.); or

(2) An adult residing in the home of the individual, but not the individual who seeks to be approved, licensed, or permitted as set forth in subsection (a) of this section, has a felony conviction for any of the offenses listed in subsections (b) and (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 506, formerly § 326, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 12, 2005, D.C. Law 15-341, § 2(q), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(7), 53 DCR 6794; Mar. 25, 2009, D.C. Law 17-368, § 4(b), 56 DCR 1338; Sept. 11, 2009, D.C. Law 18-47, § 2, 56 DCR 4960.)

Effect of amendments. — D.C. Law 15-341, in subsec. (b)(3), substituted “Intrafamily abuse, as defined in § 16-1001(5)” for “Spousal abuse”.

D.C. Law 16-191 renumbered the section.

D.C. Law 17-368, in subsec. (b)(3), substituted “offense, as defined in § 16-1001(8)” for “abuse, as defined in § 16-1001(5)”.

D.C. Law 18-47, in subsec. (b)(5), substituted “or homicide, but not including other physical assault or battery” for “homicide, assault or battery” and inserting the phrase “; in subsec. (c), in the lead-in language, deleted “, or an adult residing in the home of the individual,” following “an individual”, and inserted “, or an adult residing in the home of the individual,” and repealed par. (1); and rewrote subsec. (d).

Temporary Amendment of Section. — Section 2 of D.C. Law 17-133, in subsec. (b), in the lead-in language, substituted “An” for “Except as provided in subsection (d) of this section, an”, and in par. (5), substituted “or homicide, but not including other physical assault or battery” for “homicide, assault or battery”; in subsec. (c), in the lead-in language, deleted “, or an adult residing in the home of the individual,” and substituted “check that the individual, or an adult residing in the home of the individual,” for “check that the individual”, and repealed par. (1); and amended subsec. (d) to read as follows:

“(d) Notwithstanding the requirements of subsection (c) of this section, an individual may be approved, licensed, or permitted as set forth in subsection (a) of this section if:

“(1) The individual has a felony conviction for any of the offenses listed in subsection (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children; provided, that any adoption-assistance payments or foster-care-maintenance payments made on behalf of a child to an individual pursuant to this paragraph shall not be made with federal funds provided through Title IV-E of the Social Security Act, approved June 17, 1980 (94 Stat. 500; 42 U.S.C. § 670 et seq.); or

“(2) An adult residing in the home of the individual, but not the individual who seeks to be approved, licensed, or permitted as set forth in subsection (a) of this section, has a felony conviction for any of the offenses listed in subsection (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children.”

Section 5(b) of D.C. Law 17-133 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-297, in subsec. (b), substituted “An” for “Except as provided in subsection (d) of this section, an” in the lead-in language, substituted “or homicide, but not including other physical assault or battery” for “homicide, assault or battery” in par. (5); in subsec. (c), deleted “, or an adult residing in the home of the individual,” and substituted “check that the individual, or an adult residing in the home of the individual,” for “check that the individual” in the lead-in language, and repealed par. (1); and rewrote subsec. (d) to read as follows:

“(d) Notwithstanding the requirements of subsection (c) of this section, an individual may be approved, licensed, or permitted as set forth in subsection (a) of this section if:

“(1) The individual has a felony conviction for any of the offenses listed in subsection (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children; provided, that any adoption-assistance payments or foster-care-maintenance payments made on behalf of a child to an individual pursuant to this paragraph shall not be made with federal funds provided through Title IV-E of the Social Security Act, approved June 17, 1980 (94 Stat. 500; 42 U.S.C. § 670 et seq.); or

“(2) An adult residing in the home of the individual, but not the individual who seeks to be approved, licensed, or permitted as set forth in subsection (a) of this section, has a felony conviction for any of the offenses listed in subsection (c) of this section and, after a discretionary agency review of the conviction and current circumstances, it is determined that an approval, licensure, or permission would be consistent with the health, safety, and welfare of children.”

Section 5(b) of D.C. Law 17-297 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

For temporary (90 day) amendment of section, see § 2 of Adoption and Safe Families Emergency Amendment Act of 2007 (D.C. Act 17-232, December 27, 2007, 55 DCR 233).

For temporary (90 day) amendment of section, see § 2 of Adoption and Safe Families Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-317, March 19, 2008, 55 DCR 3415).

For temporary (90 day) amendment of section, see § 2 of Adoption and Safe Families Continuing Compliance Emergency Amendment Act of 2008 (D.C. Act 17-559, October 27, 2008, 55 DCR 12010).

For temporary (90 day) amendment of section, see § 2 of Adoption and Safe Families Continuing Compliance Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-2, January 23, 2009, 56 DCR 1622).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 17-368. — Law 17-368, the “Intrafamily Offenses Act of 2008”, was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respec-

tively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

Legislative history of Law 18-47. — Law 18-47, the “Adoption and Safe Families Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-12, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 5, 2009, and June 2, 2009, respectively. Signed by the Mayor on June 22, 2009, it was assigned Act No. 18-122 and transmitted to both Houses of Congress for its review. D.C. Law 18-47 became effective on September 11, 2009.

§ 4-1305.07. Effect of failure to request a criminal records check.

(a) If an individual described in § 4-1305.02(1), (2), or (3), or any adult residing in the home of an individual described in § 4-1305.02(1), (2), or (3), fails to request a criminal records check as required by this part, the Agency may deny approval or licensure.

(b) If an individual described in § 4-1305.02(4), or any adult residing in the home of an individual described in § 4-1305.02(4), fails to request a criminal records check as required by this part, the Family Division of the Superior Court of the District of Columbia may dismiss the petition for adoption.

(c) If an individual described in § 4-1305.02(5), or an adult residing in the home of an individual described in § 4-1305.02(5), fails to request a criminal records check as required by this part, the Family Division of the Superior Court of the District of Columbia may refuse to place the child in the individual’s home, may remove the child from the home, or may take other appropriate action to ensure the health, welfare, and safety of the child.

(Sept 23, 1977, D.C. Law 2-22, title V, § 507, formerly § 327, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(w), 48 DCR 2043; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(8), 53 DCR 6794.)

Effect of amendments. — D.C. Law 13-277, in subsec. (a), substituted “Agency” for “Department”.

D.C. Law 16-191 renumbered the section.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

For temporary (90 day) amendment of section, see § 2(c) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of sec-

tion, see § 2(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.08. Confidentiality.

(a) Information obtained pursuant to a criminal records check shall be confidential. It shall be disseminated only to:

(1) The individual who is the subject of the criminal records check;

(2) The Agency for the purpose of receiving and screening the results of a criminal records check to determine an applicant's suitability for approval or licensure;

(2A) The Office of the Attorney General for the purpose of recommending an appropriate placement under Chapter 3 of Title 16 and § 16-2320(a)(2) or § 16-2320(a)(3)(C); or

(3) The Family Division of the Superior Court of the District of Columbia for the purpose of determining the appropriateness of a placement under Chapter 3 of Title 16 and § 16-2320(a)(2) or § 16-2320(a)(3)(C).

(b) Nothing in this section shall be interpreted as prohibiting the Agency from providing to a licensed child-placing agency a summary indicating whether an applicant has been convicted of or is under pending indictment for a crime that bears upon the applicant's fitness for approval, licensure, or permission.

(c) No employee of the Family Division of the Superior Court of the District of Columbia, the Agency, or any other agency of the District of Columbia shall disclose information obtained as a result of an application submitted pursuant to § 4-1305.02 to any unauthorized individual or entity.

(d) This part shall not authorize the disclosure of information concerning an individual who was not an adult, or was not prosecuted as an adult, at the time to which the information pertains if the disclosure of such information is prohibited by law.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 508, formerly § 328, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(x), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(r), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(9), 53 DCR 6794.)

Effect of amendments. — D.C. Law 13-277, in subssecs. (a) and (b), substituted "Agency" for "Department"; and, in subsec. (c), substituted "Agency" for "Department, the Division".

D.C. Law 15-341, in subsec. (a), deleted "or" from the end of par. (2), and added par. (2A).

D.C. Law 16-191 renumbered the section.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Editor's notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

§ 4-1305.09. Penalties for violation of confidentiality.

(a) An individual who discloses confidential information in violation of § 4-1305.08 shall be guilty of a criminal offense and, upon conviction, shall be subject to a fine of not more than \$1,000 or a term of incarceration of not more than 180 days, or both.

(b) An individual who fails to disclose all of the residences and addresses required by § 4-1305.03(a)(3) shall be guilty of a criminal offense and, upon conviction, shall be subject to a fine of not more than \$1,000, a term of imprisonment of not more than 180 days, or both.

(c) Violations of this section shall be prosecuted by the Attorney General for the District of Columbia, or his or her designee, in the name of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title V, § 509, formerly § 329, as added June 27, 2000, D.C. Law 13-136, § 201(f), 47 DCR 2850; Apr. 12, 2005, D.C. Law 15-341, § 2(s), 52 DCR 2315; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(a)(10), 53 DCR 6794.)

Effect of amendments. — D.C. Law 15-341 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

D.C. Law 16-191 renumbered the section.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 4-1305.01.

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

PART F.

RULES.

§ 4-1306.01. Rules.

(a) The Mayor may, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this subchapter within 90 days of June 27, 2000. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) All existing rules and regulations promulgated pursuant to this subchapter shall remain in effect until the rules promulgated pursuant to subsection (a) of this section become effective.

(c) Notwithstanding subsection (a) of this section, the Mayor shall have full authority to enforce the provisions of subchapter.

(d) [Not funded].

(Sept. 23, 1977, D.C. Law 2-22, title VI, § 601, formerly § 341, as added June 27, 2000, D.C. Law 13-136, § 201(g), 47 DCR 2850; renumbered Mar. 2, 2007, D.C. Law 16-191, § 22(b), 53 DCR 6794; Sept. 24, 2010, D.C. Law 18-228, § 2(c), 57 DCR 6926; Sept. 14, 2011, D.C. Law 19-21, § 5052(b), 58 DCR 6226.)

Effect of amendments. — D.C. Law 16-191 renumbered the section.

D.C. Law 18-228 added subsec. (d).

D.C. Law 19-21 rewrote subsec. (d)(1), which formerly read:

“(d)(1) Within 180 days of September 24, 2010, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement D.C. Law 18-228.”

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2(e), (f) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

Emergency legislation. — For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(f) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(f) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) addition of §§ 6-2109.1 to 6-2109.9 1981 Ed., see § 201(f) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 5022(b) of Fiscal Year 2012 Budget

Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 13-136. — For Law 13-136, see notes following § 4-1305.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 4-204.61.

Legislative history of Law 18-228. — For Law 18-228, see notes following § 4-1301.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Editor's notes. — Section 3 of D.C. Law 18-228 provided: "Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of D.C. Law 18-228 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by D.C. Law 18-228, are not in effect.

Subchapter II. Reports of Neglected Children.

§ 4-1321.01. Purpose.

It is the purpose of this subchapter to require a report of a suspected neglected child in order to identify neglected children; to assure that protective services will be made available to a neglected child to protect the child and his or her siblings and to prevent further abuse or neglect; and to preserve the family life of the parents and children, to the maximum extent possible, by enhancing the parental capacity for adequate child care.

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 1; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(b), 24 DCR 3341.)

Prior Codifications. — 1981 Ed., § 2-1351. 1973 Ed., § 2-161.

Legislative history of Law 2-22. — Law 2-22, the "Prevention of Child Abuse and Neglect Act of 1977," was introduced in Council and assigned Bill No. 2-48, which was referred to the Committee on Human Resources and

Aging and the Committee on the Judiciary. The Bill was adopted on first and second readings on May 17, 1977, and May 31, 1977, respectively. Signed by the Mayor on July 6, 1977, it was assigned Act No. 2-53 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Authority of federal court.
In general.

Authority of federal court.

Order imposed by district court in class action alleging constitutional violations in District of Columbia child welfare system, which directed general receiver for that system to disregard District law in numerous areas when it unreasonably interfered with receiver's dis-

charge of her responsibilities, violated separation of powers principles, absent any recognized or implicitly conceded federal basis for consent decree reached in class action. LaShawn A. by Moore v. Barry, 144 F.3d 847, 1998 U.S. App. LEXIS 11360 (C.A.D.C. 1998).

In general.

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or ne-

glected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to

2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. LaShawn A. by Moore v. Kelly, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

§ 4-1321.02. Persons required to make reports; procedure.

(a) Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child, as defined in § 16-2301(9), shall immediately report or have a report made of such knowledge or suspicion to either the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(a-1) [Not funded].

(a-2) [Not funded].

(b) Persons required to report such abuse or neglect shall include Child and Family Services Agency employees, agents, and contractors, and every physician, psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person involved in the care and treatment of patients, law-enforcement officer, humane officer of any agency charged with the enforcement of animal cruelty laws, school official, teacher, athletic coach, Department of Parks and Recreation employee, public housing resident manager, social service worker, day care worker, human trafficking counselor as defined in § 14-311(2), domestic violence counselor as defined in § 14-310(a)(2), and mental health professional as defined in § 7-1201.01(11). Such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation. Whenever a person is required to report in his or her capacity as a member of the staff of a hospital, school, social agency or similar institution, he or she shall immediately notify the person in charge of the institution or his or her designated agent who shall then be required to make the report. The fact that such a notification has been made does not relieve the person who was originally required to report from his or her duty under subsection (a) of this section of having a report made promptly to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(c) In addition to those persons who are required to make a report, any other person may make a report to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(d) In addition to the requirements in subsections (a) and (b) of this section, any health professional licensed pursuant to Chapter 12 of Title 3, or a law enforcement officer, [or] humane officer of any agency charged with the enforcement of animal cruelty laws, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child and Family Services Agency, that the law enforcement

officer or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity. The report shall be in accordance with the provisions of § 4-1321.03.

(e) Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, or is in immediate danger of being, the victim of “sexual abuse” or “attempted sexual abuse” prohibited by Chapter 30 of Title 22 [§ 22-3001 et seq.]; or that the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute, as that term is defined in § 22-2701.01(3); or that the child has an injury caused by a bullet; or that the child has an injury caused by a knife or other sharp object which has been caused by other than accidental means, shall immediately report or have a report made of such knowledge, information, or suspicion to the Metropolitan Police Department or the Child and Family Services Agency.

(f) A health professional licensed pursuant to Chapter 12 of Title 3 [§ 3-1201.01 et seq.], who in his or her own professional or official capacity knows that a child under 12 months of age is diagnosed as having a Fetal Alcohol Spectrum Disorder, shall immediately report or have a report made to the Child and Family Services Agency.

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 2; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(c), 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 2(a), 37 DCR 50; Mar. 2, 2007, D.C. Law 16-204, § 2, 53 DCR 9059; Apr. 24, 2007, D.C. Law 16-306, § 203(a), 53 DCR 8610; July 18, 2008, D.C. Law 17-198, § 3, 55 DCR 6283; Dec. 5, 2008, D.C. Law 17-281, § 102, 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-353, §§ 173(a), 193, 240(b), 56 DCR 1117; Oct. 23, 2010, D.C. Law 18-239, § 202, 57 DCR 5405; Oct. 26, 2010, D.C. Law 18-242, § 2, 57 DCR 7555; July 13, 2012, D.C. Law 19-164, § 3, 59 DCR 6185.)

Prior Codifications. — 1981 Ed., § 2-1352. 1973 Ed., § 2-162.

Effect of amendments. — D.C. Law 16-204, in subsec. (b), substituted “domestic violence counselor as defined in § 14-310(a)(2), and mental health professional as defined in § 7-1201.01(11)” for “and mental health professional”.

D.C. Law 16-306, in subsec. (a), substituted “Child and Family Services Agency” for “Child Protective Services Division of the Department of Human Services”; in subsec. (b), inserted “Child and Family Services Agency employees, agents, and contractors, and” following “include”, and inserted “athletic coach, Department of Parks and Recreation employee, public housing resident manager,” following “teacher,”; in subses. (b), (c) and (d), substituted “Child and Family Services Agency” for “Child Protective Services Division of the Department of Human Services”; and added subsec. (e).

D.C. Law 17-198, in subsec. (b), inserted “Such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation.”

D.C. Law 17-281, in subses. (b) and (d), substituted “law-enforcement officer, humane officer of any agency charged with the enforcement of animal cruelty laws,” for “law-enforcement officer.”

D.C. Law 17-353 validated previously made technical corrections in subsec. (b).

D.C. Law 18-239, in subsec. (b), substituted “day care worker, human trafficking counselor as defined in § 14-311(2),” for “day care worker.”

D.C. Law 18-242 added subses. (a-1) and (a-2).

D.C. Law 19-164 added subsec. (f).

Temporary Amendment of Section. —

Section 3 of D.C. Law 19-64 added subsec. (f) to read as follows:

“(f) A health professional licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 et seq.), who in his or her own professional or official capacity knows that a child under 12 months of age is diagnosed as having a Fetal Alcohol Spectrum Disorder shall immediately report or have a report made to the Child and Family Services Agency.”

Section 5(b) of D.C. Law 19-64 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 203(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 203(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 203(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 203(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 3 of Child Abuse Prevention and Treatment Emergency Amendment Act of 2011 (D.C. Act 19-165, October 11, 2011, 58 DCR 8896).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

Legislative history of Law 8-87. — Law 8-87, the “Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-139, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-137 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-204. — Law 16-204, the “Domestic Violence Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-466, which was referred to the Committee on Judiciary. The Bill was ad-

opted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-504 and transmitted to both Houses of Congress for its review. D.C. Law 16-204 became effective on March 2, 2007.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

Legislative history of Law 17-198. — For Law 17-198, see notes following § 4-1301.06b.

Legislative history of Law 17-281. — Law 17-281, the “Animal Protection Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-89 which was referred to the Committees on Health and Public Safety and Judiciary. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-493 and transmitted to both Houses of Congress for its review. D.C. Law 17-281 became effective on December 5, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 4-1301.06b.

Legislative history of Law 18-239. — For history of Law 18-239, see notes under § 4-501.

Legislative history of Law 18-242. — Law 18-242, the “Safe Children and Safe Neighborhoods Educational Neglect Mandatory Reporting Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-529, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 15, 2010, and July 13, 2010, respectively. Signed by the Mayor on July 30, 2010, it was assigned Act No. 18-493 and transmitted to both Houses of Congress for its review. D.C. Law 18-242 became effective on October 26, 2010.

Legislative history of Law 19-164. — For history of Law 19-164 see notes under § 4-1301.09a.

Editor’s notes. — Section 4 of D.C. Law 18-242 provided:

“Sec. 4. Applicability.

“Section 2 shall apply as follows:

“(1) Subsection (a) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

“(2) Subsection (b) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of section 2(a) and (b) of Law 18-242 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-242, are not in effect.

CASE NOTES

ANALYSIS

Due process.
In general.
School officials.
Waiver of privilege.

Due process.

Statutory exception to physician-patient privilege in child neglect proceeding did not violate mother's due process privacy right with regard to medical information; interest of District of Columbia in assuring that mother was mentally competent to raise her daughter was sufficiently strong to limit privacy rights. D.C. Code 1981, §§ 2-1355, 14-307; U.S.C. Const.Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

In general.

The "reasonable cause" standard requires only that the physician has a reason to believe that a child is abused. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

It is possible for a doctor to have reasonable cause to believe that a child is abused, even though his failure to conduct a more thorough investigation failed to satisfy professional standards. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

Fact that subsequent investigation by the authorities proved suspicions of child abuse incorrect did not negate the reasonableness of the physician's beliefs. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

School officials.

Mandatory reporting statute did not criminalize school officials' failure to report

suspected sexual abuse to law enforcement authorities after a student's parents complained to them that their daughter had been molested at school by other students; statute imposed no reporting requirement in the absence of reasonable cause to suspect caretaker malfeasance in connection with the abuse or neglect of a child, and school officials, a school principal and vice principal, had no reason to suspect such malfeasance on the part of the parents or other caretakers. *Hargrove v. District of Columbia*, 5 A.3d 632, 2010 D.C. App. LEXIS 557 (2010).

Waiver of privilege.

In interpreting statutory waiver of physician-patient privilege in proceedings concerning welfare of neglected child, fortress should not be made out of dictionary at expense of achieving evident legislative purpose of enabling trial court to carry out its obligations to child. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

Statutory waiver of physician-patient privilege in proceeding concerning welfare of "neglected child" was not limited in scope to proceedings involving child that has already been adjudged neglected. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

In child neglect proceeding based on mother's alleged mental illness and drug abuse, trial judge had statutory authority, over mother's objection, to "waive" her physician-patient privilege with respect to past professional evaluations of her mental condition. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

§ 4-1321.03. Nature and contents of reports.

(a) Each person required to make a report of a known or suspected neglected child shall:

(1) Immediately make an oral report of the case to the Child and Family Services Agency or the Metropolitan Police Department of the District of Columbia; and

(2) Make a written report of the case if requested by said Division or Police or if the abuse involves drug-related activity.

(b) The report shall include, but need not be limited to, the following information if it is known to the person making the report:

(1) The name, age, sex, and address of the following individuals:

(A) The child who is the subject of the report;

(B) Each of the child's siblings and other children in the household; and

(C) Each of the child's parents or other persons responsible for the child's care;

(2) The nature and extent of the abuse or neglect of the child and any previous abuse or neglect, if known;

(3) All other information which the person making the report believes may be helpful in establishing the cause of the abuse or neglect and the identity of the person responsible for the abuse or neglect; and

(4) If the source was required to report under this subchapter, the identity and occupation of the source, how to contact the source and a statement of the actions taken by the source concerning the child.

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 3; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(d), 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 2(b), 37 DCR 50; Apr. 12, 2005, D.C. Law 15-341, § 3, 52 DCR 2315; Apr. 24, 2007, D.C. Law 16-306, § 203(b), 53 DCR 8610.)

Cross references. — Child Protection Register, information retained, see 4-1302.02.

“Substantiated report” and “Unfounded report” defined, see 4-1301.02

Prior Codifications. — 1981 Ed., § 2-1353. 1973 Ed., § 2-163.

Effect of amendments. — D.C. Law 15-341 rewrote subsec. (b)(1)(B) which had read as follows: “(B) Each of the child’s siblings; and”

D.C. Law 16-306, in subsec. (a)(1), substituted “Child and Family Services Agency” for “Child Protective Services Division of the Department of Human Services”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 203(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 203(b) of Omnibus Public Safety Congressional Review Emergency Amendment

Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 203(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 203(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

Legislative history of Law 8-87. — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 4-1321.02.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

§ 4-1321.04. Immunity from liability.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this subchapter shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of the report. Any such participation shall have the same immunity with respect to participation in any judicial proceeding involving the report. In all civil or criminal proceedings concerning the child or resulting from the report good faith shall be presumed unless rebutted.

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 4; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(e), 24 DCR 3341.)

Prior Codifications. — 1981 Ed., § 2-1354. 1973 Ed., § 2-164.

Legislative history of Law 2-22. — For

legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

CASE NOTES

In general.

It is possible for a doctor to have reasonable cause to believe that a child is abused, even though his failure to conduct a more thorough investigation failed to satisfy professional standards. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

Fact that subsequent investigation by the authorities proved suspicions of child abuse incorrect does not negate the reasonableness of the physician's beliefs. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

Allegations of negligence, coupled with the

information provided through discovery, failed to overcome the statutory immunity and the presumption of good faith provided to physicians under the child abuse immunity and reporting statutes. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

Where defendant had reasonable cause to suspect that child had been sexually abused and there were no facts in dispute regarding her acting in good faith in reporting the case to the authorities, defendant was immune from legal liability. *Battle v. Gaither*, 116 WLR 709 (Super. Ct. 1988).

§ 4-1321.05. Privileges; waiver.

Notwithstanding the provisions of §§ 14-306 and 14-307, neither the spouse or domestic partner privilege nor the physician-patient privilege shall be grounds for excluding evidence in any proceeding in the Family Division of the Superior Court of the District of Columbia concerning the welfare of a neglected child; provided, that a judge of the Family Division of the Superior Court of the District of Columbia determines such privilege should be waived in the interest of justice.

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-775, § 5; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 159(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 103(f), 24 DCR 3341; Sept. 12, 2008, D.C. Law 17-231, § 13, 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 2-1355. 1973 Ed., § 2-165.

Effect of amendments. — D.C. Law 17-231 substituted "spouse or domestic partner" for "husband-wife".

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 4-1301.02.

CASE NOTES

ANALYSIS

Due process.

In general.

Waiver of privilege.

Due process.

Statutory exception to physician-patient privilege in child neglect proceeding did not violate mother's due process privacy right with regard to medical information; interest of District of Columbia in assuring that mother was mentally competent to raise her daughter was sufficiently strong to limit privacy rights. D.C. Code 1981, §§ 2-1355, 14-307; U.S.C. Const. Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

In general.

Information concerning the mental health of a mother must be obtained through § 16-

2315(e)(1) rather than this section, since the legislative history of this section shows that that provision was not intended to effect a general waiver on the doctor-patient privilege in neglect trials; rather, the legislature prescribed a special examination procedure in § 16-2315(e)(1). In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Waiver of privilege.

In interpreting statutory waiver of physician-patient privilege in proceedings concerning welfare of neglected child, fortress should not be made out of dictionary at expense of achieving evident legislative purpose of enabling trial court to carry out its obligations to child. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

Statutory waiver of physician-patient privilege in proceeding concerning welfare of "neglected child" was not limited in scope to pro-

ceedings involving child that has already been adjudged neglected. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

In child neglect proceeding based on mother's alleged mental illness and drug abuse, trial judge had statutory authority, over mother's objection, to "waive" her physician-patient privilege with respect to past professional evaluations of her mental condition. D.C. Code 1981, § 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

The waiver provision of this section applies to any proceeding concerning the welfare of a

neglected child. In re D.H., 117 WLR 2109 (Super. Ct. 1989).

The legislature intended the waiver authorization of this section to extend to cases beyond those that actually arose from a report made by a doctor. In re D.H., 117 WLR 2109 (Super. Ct. 1989).

The waiver in this section applies to "evidence," and this term is broad enough to encompass information possessed by a doctor or other health professional, whether that information was previously required to be disclosed or not. In re D.H., 117 WLR 2109 (Super. Ct. 1989).

§ 4-1321.06. Exceptions for treatment solely by spiritual means.

Notwithstanding any other provision of this subchapter, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected within the purview of this subchapter.

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-775, § 6.)

Prior Codifications. — 1981 Ed., § 2-1356. 1973 Ed., § 2-166.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Prevention of Child Neglect Temporary Amendment Act of 1993 (D.C. Law 10-61, November 20, 1993, law notification 40 DCR 8454).

Emergency legislation. — For temporary

amendment of section, see § 2 of the Prevention of Child Neglect Emergency Amendment Act of 1993 (D.C. Act 10-100, August 9, 1993, 40 DCR 6141).

For temporary amendment of section, see § 2 of the Prevention of Child Neglect Emergency Amendment Act of 1994 (D.C. Act 10-288, July 22, 1994, 41 DCR 4992).

§ 4-1321.07. Failure to make report.

Any person required to make a report under this subchapter who willfully fails to make such a report shall be fined not more than \$300 or imprisoned for not more than 90 days or both. Violations of this subchapter shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her agent in the name of the District of Columbia.

(Nov. 6, 1966, Pub. L. 89-775, § 7; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(g), 24 DCR 3341; Apr. 24, 2007, D.C. Law 16-306, § 203(c), 53 DCR 8610.)

Prior Codifications. — 1981 Ed., § 2-1357. 1973 Ed., § 2-167.

Effect of amendments. — D.C. Law 16-306 substituted "\$300" for "\$100"; and substituted "90" for "30".

Emergency legislation. — For temporary (90 day) amendment of section, see § 203(c) of Omnibus Public Safety Emergency Amend-

ment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 203(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of sec-

tion, see § 203(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 203(c) of Omnibus Public Safety Second Congressional Review Emergency

Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 2-22. — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

Subchapter III. Child Abuse and Neglect Prevention Children's Trust Fund.

§ 4-1341.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Child" means a person under 18 years of age.

(2) "Child abuse" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which occurs through the intentional infliction of physical or emotional injury or an act of sexual abuse, which includes a violation of any provision of subchapter of this chapter.

(3) "Child neglect" means harm to a child's health or welfare which occurs through the failure to provide adequate food, clothing, shelter, education, or medical care.

(4) "Prevention program" means a program designed to prevent child abuse or child neglect including a community-based program that:

(A) Focuses on child abuse or child neglect;

(B) Focuses on public awareness;

(C) Focuses on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs or coping with family stress;

(D) Provides aid to parents who potentially may abuse or neglect their children, child abuse or child neglect counseling, support groups for parents who potentially may abuse or neglect their children, and support groups for their children, or early identification of families in which there is a potential for child abuse or child neglect;

(E) Trains and places volunteers in programs that focus on child abuse or child neglect prevention; or

(F) Develops and makes available to the District of Columbia Board of Education curricula and educational material on basic child care and parenting skills, or trains educators.

(Oct. 5, 1993, D.C. Law 10-56, § 2, 40 DCR 7222.)

Section references. — This section is referred to in § 16-914.

Prior Codifications. — 1981 Ed., § 6-2131.

Emergency legislation. — For temporary addition of subchapter IV, see §§ 2-9 of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Act of 1993 (D.C. Act 10-87, August 4, 1993, 40 DCR 6067) and §§ 2-9 of the Child Abuse and Neglect Preven-

tion Children's Trust Fund Congressional Reccess Emergency Act of 1993 (D.C. Act 10-133, October 27, 1993, 40 DCR 7600).

Legislative history of Law 10-56. — D.C. Law 10-56, the "Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993" was introduced in Council and assigned Bill No. 10-114, which was referred to the Committee on Human Services. The Bill was adopted on

first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act

No. 10-109 and transmitted to both Houses of Congress for its review. D.C. Law 10-56 became effective on November 20, 1993.

§ 4-1341.02. Establishment of the Child Abuse and Neglect Prevention Children's Trust Fund.

(a) There is established in the District of Columbia a private nonprofit corporation which shall be known as the Child Abuse and Neglect Prevention Children's Trust Fund ("Trust Fund"). The sole purpose of the Trust Fund is to encourage child abuse and child neglect prevention programs.

(b) The Trust Fund may accept appropriations from the District and shall accept gifts, bequests and grants from persons, organizations, corporations and foundations.

(c) The Trust Fund shall accept federal funds granted by Congress or Executive Order.

(d) Repealed.

(d-1) The Trust Fund may hold and distribute funds for other organizations. Auditing procedures shall be established by the Board.

(e) Repealed.

(f) Repealed.

(g) The Trust Fund shall supplement but not replace services provided by District agencies.

(h) The Trust Fund shall not provide funding to District government agencies.

(Oct. 5, 1993, D.C. Law 10-56, § 3, 40 DCR 7222; June 28, 1994, D.C. Law 10-134, § 7, 41 DCR 2597; Apr. 20, 1999, D.C. Law 12-233, § 2(a), 46 DCR 564.)

Prior Codifications. — 1981 Ed., § 6-2132.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of South Africa Sanctions Repeal Act 1993 (D.C. Law 10-75, March 8, 1994, law notification 41 DCR 1518).

For temporary (225 day) amendment of section, see § 2(a) of Child Abuse and Neglect Prevention Children's Trust Fund Temporary Amendment Act of 1997 (D.C. Law 12-51, February 27, 1998, law notification 45 DCR).

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

For temporary amendments of section, see § 7 of the South Africa Sanctions Emergency Repeal Act of 1993 (D.C. Act 10-127, October 25, 1993, 40 DCR 7583) and § 7 of the South Africa Sanctions Congressional Recess Emergency Repeal Act of 1994 (D.C. Act 10-176, January 25, 1994, 41 DCR 512).

For temporary amendment of section, see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1997 (D.C. Act 12-141, August 12,

1997, 44 DCR 4854), see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-182, October 30, 1997, 44 DCR 6956), and see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-252, January 29, 1998, 45 DCR 901).

For temporary amendment of section, see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1998 (D.C. Act 12-484, October 8, 1998, 45 DCR 8030), and § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-618, January 22, 1999, 46 DCR 1337).

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

Legislative history of Law 10-134. — Law 10-134, the "South Africa Sanctions Repeal Act of 1994," was introduced in Council and as-

signed Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Legislative history of Law 12-233. — Law 12-233, the “Child Abuse and Neglect Preven-

tion Children’s Trust Fund Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-380, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 16, 1998, it was assigned Act No. 12-553 and transmitted to both Houses of Congress for its review. D.C. Law 12-233 became effective on April 20, 1999.

§ 4-1341.03. Establishment of Board of Directors.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall have 15 members. The D.C. Treasurer and the Director of the Department of Human Services shall serve as members of the Board of Directors. The remaining 13 members shall have a demonstrated knowledge in the area of child abuse and child neglect prevention and shall reflect a diversity of gender and ethnicity. Each ward in the District shall be represented on the Board of Directors. Through its by-laws, the Board of Directors may expand the number of members of the Board to include a business representative.

(b) The D.C. Treasurer and the Director of the Department of Human Services shall serve terms as members of the Board of Directors for the same duration as the terms of their offices.

(c) The 12 initial nongovernmental members shall serve the following terms: 3 members shall serve 3 years; 5 members shall serve 2 years; and 4 members shall serve 1 year.

(d) The 12 initial nongovernmental members shall be appointed by resolution of the Council.

(e) In the event that 1 of the 12 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term is unexpired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years.

(g) Members shall be compensated only for out-of-pocket expenses incurred from the accomplishment of their responsibilities as members of the Board of Directors.

(h) The Board of Directors shall elect a chairperson from among the members. The Board of Directors may elect other officers and form committees as it considers appropriate.

(Oct. 5, 1993, D.C. Law 10-56, § 4, 40 DCR 7222; Apr. 20, 1999, D.C. Law

12-233, § 2(b), 46 DCR 564; Apr. 12, 2000, D.C. Law 13-91, § 140, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 6-2133.

Effect of amendments. — D.C. Law 13-91, in the fourth sentence of subsec. (a), substituted “13” for “12”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Child Abuse and Neglect Prevention Children’s Trust Fund Temporary Amendment Act of 1997 (D.C. Law 12-51, February 27, 1998, law notification 45 DCR).

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

For temporary amendment of section, see § 2(b) of the Child Abuse and Neglect Prevention Children’s Trust Fund Emergency Amendment Act of 1997 (D.C. Act 12-141, August 12, 1997, 44 DCR 4854), see § 2(b) of the Child Abuse and Neglect Prevention Children’s Trust Fund Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-182, October 30, 1997, 44 DCR 6956), and see § 2(b) of the Child Abuse and Neglect Prevention Children’s Trust Fund Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-252, January 29, 1998, 45 DCR 901).

For temporary amendment of section, see

§ 2(b) of the Child Abuse and Neglect Prevention Children’s Trust Fund Emergency Amendment Act of 1998 (D.C. Act 12-484, October 10, 1998, 45 DCR 8030), and § 2(b) of the Child Abuse and Neglect Prevention Children’s Trust Fund Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-618, January 22, 1999, 46 DCR 1337).

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

Legislative history of Law 12-233. — For legislative history of D.C. Law 12-233, see Historical and Statutory Notes following § 4-1341.02.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 4-1341.04. Powers and responsibilities of the Board of Directors.

- (a) The Board of Directors shall:
 - (1) Administer the Trust Fund;
 - (2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;
 - (3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;
 - (4) Remove a member by a $\frac{2}{3}$ rd vote of the remaining members of the Board of Directors;
 - (5) Meet not less than quarterly at a time to be determined;
 - (6) Assess service needs and gaps relative to child abuse and child neglect prevention programs in the District;
 - (7) Develop and implement program recommendations in order to address identified service needs;
 - (8) Develop and implement proposal solicitation and establish criteria for the awarding of grants to meet identified service needs;
 - (9) Review, approve, and monitor the expenditure of the Trust Fund and child abuse and child neglect prevention programs;
 - (10) Assist in providing information to the public about the purpose and work of the Trust Fund;
 - (11) Hire and monitor an executive director of the Trust Fund; and

(12) Invite comments and recommendations at least annually from interested child advocacy coalitions and community organizations to review the Trust Fund's program plans.

(b) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.

(c) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The plan shall be developed annually. The plan shall assure a distribution of funds to services that reach children in all geographic areas of the District. The plan shall be transmitted to the Mayor and Chairman of the Council.

(Oct. 5, 1993, D.C. Law 10-56, § 5, 40 DCR 7222.)

Prior Codifications. — 1981 Ed., § 6-2134.

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

§ 4-1341.05. Service of process.

The Trust Fund shall maintain a designated agent to accept service of process for the Trust Fund. Notice to or service upon the agent is notice or service upon the Trust Fund.

(Oct. 5, 1993, D.C. Law 10-56, § 6, 40 DCR 7222.)

Prior Codifications. — 1981 Ed., § 6-2135.

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

§ 4-1341.06. Corporate powers.

The Trust Fund may exercise those powers conferred upon a nonprofit corporation pursuant to Chapters 1 and 4 of Title 29.

(Oct. 5, 1993, D.C. Law 10-56, § 7, 40 DCR 7222; July 2, 2011, D.C. Law 18-378, § 3(b), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 6-2136.

Effect of amendments. — D.C. Law 18-378 substituted "Chapters 1 and 4 of Title 29" for "subchapter I of Chapter 3 of Title 29".

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

Legislative history of Law 18-378. — Law

18-378, the "District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009", was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

§ 4-1341.07. Dissolution.

Except as otherwise provided in a contract or legacy transferring or loaning

property to the Trust Fund, upon dissolution of the Trust Fund as a corporation, all remaining assets shall be transferred to the Mayor of the District of Columbia. The Mayor shall make every effort to use the assets for the prevention of child abuse and child neglect as provided in this subchapter.

(Oct. 5, 1993, D.C. Law 10-56, § 8, 40 DCR 7222.)

Prior Codifications. — 1981 Ed., § 6-2137.

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

§ 4-1341.08. Tax status.

The Trust Fund may engage in such activities that make it eligible for treatment as an organization described in § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) which may be exempt from federal taxation under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)).

(Oct. 5, 1993, D.C. Law 10-56, § 9, 40 DCR 7222.)

Prior Codifications. — 1981 Ed., § 6-2138.

Emergency legislation. — For temporary addition of subchapter, see notes to § 4-1341.01.

Legislative history of Law 10-56. — For legislative history of D.C. Law 10-56, see Historical and Statutory Notes following § 4-1341.01.

Editor's notes. — Establishment of juvenile curfew: For temporary provisions establishing a curfew for juveniles under the age of 17 years in the District of Columbia, parental responsibility for implementation of the act, and exceptions to the act, see §§ 2 through 4 of the Juvenile Curfew Emergency Act of 1995 (D.C. Act 11-86, July 6, 1995, 42 DCR 3612).

Subchapter III-A. Integrated Funding and Services for At-Risk Children, Youth, and Families.

§ 4-1345.01. Definitions.

For the purposes of this subchapter, the term:

(1) "At-risk child or youth" means an individual who is less than 18 years of age and exhibits, is characterized by, or is subject to one or more of the following conditions:

- (A) Abuse or neglect, as described in § 16-2301(9) and (23);
- (B) Developmental disability, as that term is defined in § 21-1201(3);
- (C) Delinquency, as described in § 16-2301(6);
- (D) Homelessness, as described in § 4-751.01(18);
- (E) Mental illness, as that term is defined in § 21-501(5);
- (F) Mental retardation, as that term is defined in § 21-1201(7);
- (G) Poverty, as defined by the income eligibility guidelines set by the United States Department of Agriculture for the school lunch and school breakfast programs;
- (H) Probation, as that term is defined in § 16-2301(18);
- (I) School dropout, defined as not attending school without graduating from high school or completing an approved education program;
- (J) Substance abuse, as that term is defined in § 7-3002(12);

(K) Teenage pregnancy; or

(L) Truancy, defined as 10 or more unexcused absences during a school semester.

(2) "At-risk family" means a family that exhibits, is characterized by, or is subject to one or more of the following conditions:

(A) Abuse or neglect, as described in § 16-2301(9) and (23);

(B) Homelessness, as described in § 4-751.01(18);

(C) Incarceration of a parent;

(D) Intrafamily violence, as described in § 16-1001(7) [now (9)];

(E) Mental illness, as that term is defined in § 21-501(5), of a parent or caregiver;

(F) Poverty, as defined by the income eligibility guidelines set by the United States Department of Agriculture for the school lunch and school breakfast programs;

(G) Substance abuse, as that term is defined in § 7-3002(12), of a parent or caregiver; or

(H) Teenage parenthood.

(3) "Child" means an individual who is less than 18 years of age.

(4) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5) "Family" means an adult or adults who share a residence with at least one child and are related by blood, legal custody, marriage, or domestic partnership.

(6) "Fund" means the Integrated Services Fund for At-Risk Children, Youth, and Families.

(7) "Local funding" means funding appropriated from tax and non-tax revenue raised by the District of Columbia government and not earmarked for a particular purpose.

(8) "Youth" means an individual who is at least 13 years of age and less than 18 years of age.

(Mar. 2, 2007, D.C. Law 16-192, § 5202, 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-368, § 4(c), 56 DCR 1338.)

Effect of amendments. — D.C. Law 17-368, in par. (2)(D), substituted "§ 16-1001(7)" for "§ 16-1031".

Emergency legislation. — For temporary (90 day) addition, see § 5202 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 5202 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 5202 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law

16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-368. — For Law 17-368, see notes following § 4-1305.06.

Short title. — Short title: Section 5201 of D.C. Law 16-192 provided that subtitle N of title V of the act may be cited as the "Integrated Funding and Services for At-Risk Children, Youth, and Families Act of 2006".

§ 4-1345.02. Integrated Services Fund for At-Risk Children, Youth, and Families.

(a) There is established the Integrated Services Fund for At-Risk Children, Youth, and Families, which shall be a nonlapsing fund separate from the General Fund of the District of Columbia and used to implement initiatives, programs, and services to meet the needs of at-risk children, youth, and their families in a holistic, interdisciplinary manner pursuant to § 4-1345.03.

(b) The Mayor, or his or her designee, may transfer to the Fund up to one percent of the local funding appropriated in the District of Columbia's annual financial plan and budget for each of the following agencies, or any successor agencies:

- (1) The Child and Family Services Agency;
- (2) The Department of Employment Services;
- (3) The Department of Health, excluding local funding appropriated or authorized for the Medicaid program authorized by Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; [42 U.S.C. § 1396 et seq.];
- (4) The Department of Human Services;
- (5) The Department of Mental Health; and
- (6) The Department of Youth Rehabilitation Services.

(c) The Mayor may also designate federal or private grant funds to be deposited into the Fund if the designation of funds is consistent with the terms of the federal or private grant.

(d) Funds deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in § 4-1345.03, subject to authorization by Congress.

(e) The Chief Financial Officer shall provide the necessary administrative and management support to pool the funds described in subsections (a) and (b) of this section into the Fund, and shall maintain systems of accounting and control that provide the Mayor with financial information needed for management purposes and ensure accountability for the use of the Fund's resources.

(f) The Mayor shall submit a budget and spending plan for the Fund as part of the annual budget that he or she transmits to the Council. The plan shall include:

- (1) The amount proposed to be transferred from each agency;
- (2) The effect, if any, on programs in the agencies from which the funds are being transferred; and
- (3) A listing of each program and its financing through the Fund.

(Mar. 2, 2007, D.C. Law 16-192, § 5203, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 5203 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 5203 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 5203 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 4-1345.01.

§ 4-1345.03. Scope and design of programs and services.

(a) The Mayor shall use the funds described in § 4-1345.02 to support policies, programs, and services for at-risk children, youth, and families that:

(1) Offer a broad spectrum of assistance and support tailored to the needs of at-risk children, youth, and families, such as child abuse prevention, child care, domestic violence prevention, job training, maternal and child health, mental health counseling, mentoring, parent education, respite care, and substance abuse treatment;

(2) Cross agency and professional boundaries, using an interdisciplinary approach and employing techniques such as case management, co-location of programs and staff, and inter-agency case conferences to ensure that services are coordinated and accessible to at-risk children, youth, and families;

(3) Build on family strengths and view the needs of the child or youth in the context of his or her family;

(4) Respect cultural diversity and promote family involvement;

(5) Adopt flexible approaches to service delivery, such as home visits, and ensure that essential supports, such as transportation, are in place so that at-risk children, youth, and families can use available services;

(6) Promote access and continuity by offering assistance, when possible, in non-traditional settings such as the home, school, or community, and at convenient times, including evening and weekend hours, and by reducing complex eligibility and paperwork requirements;

(7) Reduce barriers to essential programs and services by reducing complex eligibility and paperwork requirements and providing referrals to programs and services offered by private organizations;

(8) Are of sufficient intensity and duration to help children, youth, and families who are most at risk or in need, as reflected by multiple risk factors or chronic poverty;

(9) Are provided by skilled and committed individuals with experience and demonstrated effectiveness in serving at-risk children, youth, and families; and

(10) Support, to the greatest extent possible, in-home and community care for children and youth in the child welfare or juvenile justice systems, or at risk of referral to those systems, while reducing reliance on out-of-home or institutional care.

(b) The Mayor shall establish performance measures and goals for the programs and services financed by the Fund. The measures and goals shall focus on high-priority outcomes for at-risk children, youth, and families, and shall reflect the impact, effectiveness, and quality of the programs and services. The Mayor shall include the measures and goals in the performance plans and reports required by subchapter XIV-A of Chapter 6 of Title 1 [§ 1-614.11 et seq.].

(Mar. 2, 2007, D.C. Law 16-192, § 5204, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 5204 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068). For temporary (90 day) addition, see § 5204

of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 5204 of Fiscal Year 2007 Budget Support Congressio-

nal Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 4-1345.01.

Subchapter IV. Adoption Improvement.

§ 4-1361. Database.

The District of Columbia Child and Family Services Agency (referred to as “CFSA”) shall maintain an accurate database listing and tracking any child found by the Family Division of the District of Columbia Superior Court to be abused or neglected and who is in the custody of the District of Columbia, including any child with the goal of adoption or legally free for adoption.

(Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 157(b).)

Prior Codifications. — 1981 Ed., § 6-2141.

Short title. — District of Columbia Adoption Improvement Act of 1998: Section 157(a) of Pub. L. 105-277, 112 Stat. 2681-146, provided

that the subchapter may be cited as the “District of Columbia Adoption Improvement Act of 1998.”

§ 4-1362. Contracting with private service providers.

(a) *Private contracts.* — Not later than September 30, 1999, CFSA shall enter into contracts with private service providers to perform some of the adoption recruitment and placement functions of CFSA, which may include recruitment, homestudy, and placement services.

(b) *Competitive bidding.* — Any contract entered into pursuant to subsection (a) of this section shall be subject to a competitive bidding process when required by CFSA contracting policies and procedures.

(c) *Performance-based compensation.* —

(1) *In general.* — Any contract entered into pursuant to subsection (a) of this section shall compensate the winning bidder pursuant to subsection (b) of this section upon completion of contract deliverables.

(2) *Contract deliverables.* — In identifying contract deliverables, CFSA shall consider:

(A) In the case of recruitment, receipt of a list of potential adoptive families;

(B) In the case of homestudies, receipt of a completed home-study in a form specified in advance by CFSA; or

(C) In the case of placements, the child is placed in an adoptive home approved by CFSA or the adoption is finalized.

(d) *Types of contracts.* — Nothing in this section shall be construed to prevent CFSA from entering into contracts that provide for multiple deliverables or conditions for partial payment.

(e) *Removal of barriers to adoption.* — CFSA shall meet with contractors to address issues identified during the term of a contract entered into pursuant to this subchapter, including issues related to barriers to timely adoptions.

(Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 157(c).)

Prior Codifications. — 1981 Ed., § 6-2142.

Subchapter V. Child Fatality Review Committee.

§ 4-1371.01. Short title.

This subchapter may be cited as the “Child Fatality Review Committee Establishment Act of 2001”.

(Oct. 3, 2001, D.C. Law 14-28, § 4601, 48 DCR 6981.)

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Child” means an individual who is 18 years of age or younger, or up to 21 years of age if the child is a committed ward of the child welfare, mental retardation and developmental disabilities, or juvenile systems of the District of Columbia.

(2) “Committee” means the Child Fatality Review Committee.

(Oct. 3, 2001, D.C. Law 14-28, § 4602, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.03. Establishment and purpose.

(a) There is established, as part of the District of Columbia government, a Child Fatality Review Committee. Facilities and other administrative support may be provided in a specific department or through the Committee, as determined by the Mayor.

(b) The Committee shall:

(1) Identify and characterize the scope and nature of child deaths in the jurisdiction, particularly those that are violent, accidental, unexpected, or unexplained;

(2) Examine past events and circumstances surrounding child deaths by reviewing the records and other pertinent documents of public and private agencies responsible for serving families and children, investigating deaths, or treating children in an effort to reduce the number of preventable child fatalities and shall give special attention to child deaths that may have been caused by abuse, negligence, or other forms of maltreatment;

(3) Develop and revise as necessary operating rules and procedures for the review of child deaths, including identification of cases to be reviewed,

coordination among the agencies and professionals involved, and improvement of the identification, data collection, and record keeping of the causes of child death;

(4) Recommend systemic improvements to promote improved and integrated public and private systems serving families and children;

(5) Recommend components for prevention and education programs; and

(6) Recommend training to improve the investigation of child deaths.

(Oct. 3, 2001, D.C. Law 14-28, § 4603, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 3 of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section,

see § 3 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-20. — For Law 14-20, see notes following § 4-1302.03.

Delegation of Authority. — Delegation of Authority Pursuant to DC Act 14-40, the Child Fatality Review Committee Establishment Emergency Act of 2001, see Mayor's Order 2001-119, August 9, 2001 (48 DCR 7810).

§ 4-1371.04. Composition of the Child Fatality Review Committee.

(a) The Mayor shall appoint a minimum of one representative from appropriate programs providing services to children within the following public agencies:

- (1) Department of Human Services;
- (2) Department of Health;
- (3) Office of the Chief Medical Examiner;
- (4) Child and Family Services Agency;
- (5) Metropolitan Police Department;
- (6) Fire and Emergency Medical Services Department;
- (7) D.C. Public Schools;
- (8) Department of Housing and Community Development; and
- (9) Office of the Corporation Counsel.

(b) The Mayor shall appoint, or request the designation of, members from federal, judicial, and private agencies and the general public who are knowledgeable in child development, maternal and child health, child abuse and neglect, prevention, intervention, treatment or research, with due consideration given to representation of ethnic or racial minorities and to geographic areas of the District of Columbia. The appointments shall include representatives from the following:

- (1) Superior Court of the District of Columbia;
- (2) Office of the United States Attorney for the District of Columbia;
- (3) District of Columbia hospitals where children are born or treated;
- (4) College or university schools of social work; and
- (5) Mayor's Committee on Child Abuse and Neglect.

(c) The Mayor, with the advice and consent of the Council, shall appoint 8

community representatives, none of whom shall be employees of the District of Columbia.

(d) Governmental appointees shall serve at the will of the Mayor, or of the federal or judicial body designating their availability for appointment. Community representatives shall serve for 3-year terms.

(e) Vacancies in membership shall be filled in the same manner in which the original appointment was made.

(f) The Committee shall select co-chairs according to rules set forth by the Committee.

(g) The Committee shall establish quorum and other procedural requirements as it considers necessary.

(Oct. 3, 2001, D.C. Law 14-28, § 4604, 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 36, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(c), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-105, in subsec. (f), validated a previously made technical correction.

D.C. Law 15-354, in subsec. (f), validated a previously made technical correction.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 4 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 4 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 4-204.08.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 4-204.55.

§ 4-1371.05. Criteria for case review.

(a) The Committee shall be responsible for reviewing the deaths of children who were residents of the District of Columbia and of such children who, or whose families, at the time of death:

(1) Or at any point during the 2 years prior to the child's death, were known to the juvenile justice or mental retardation or developmental disabilities systems of the District of Columbia; and

(2) Or at any point during the 4 years prior to the child's death, were known to the child welfare system of the District of Columbia.

(b) The Committee may review the deaths of nonresidents if the death is determined to be accidental or unexpected and occurs within the District.

(c) The Committee shall establish, by regulation, the manner of review of cases, including use of the following approaches:

(1) Multidisciplinary review of individual fatalities;

(2) Multidisciplinary review of clusters of fatalities identified by special category or characteristic;

(3) Statistical reviews of fatalities; or

(4) Any combination of such approaches.

(d) The Committee shall establish 2 review teams to conduct its review of child fatalities. The Infant Mortality Review Team shall review the deaths of

children under the age of one year and the Child Fatality Review Team shall review the deaths of children over the age of one year. Each team may include designated public officials with responsibilities for child and juvenile welfare from each of the agencies and entities listed in § 4-1371.04.

(e) Full multidisciplinary/multi-agency reviews shall be conducted, at a minimum, on the following fatalities:

- (1) Those children known to the juvenile justice system;
- (2) Those children who are known to the mental retardation/developmental disabilities system;
- (3) Those children for which there is or has been a report of child abuse or neglect concerning the child's family;
- (4) Those children who were under the jurisdiction of the Superior Court of the District of Columbia (including protective service, foster care, and adoption cases);
- (5) Those children who, for some other reason, were wards of the District; and
- (6) Medical Examiner Office cases.

(Oct. 3, 2001, D.C. Law 14-28, § 4605, 48 DCR 6981; Apr. 12, 2005, D.C. Law 15-341, § 4, 52 DCR 2315.)

Effect of amendments. — D.C. Law 15-341 rewrote subsec. (a) which had read as follows: “(a) The Committee shall be responsible for reviewing the deaths of children who were residents of the District of Columbia and of such children who, or whose families, at the time of death, or at any point during the 2 years prior to the child's death, were known to the child welfare, juvenile justice, or mental retardation or developmental disabilities systems of the District of Columbia.”

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 5 of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 5 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

Legislative history of Law 15-341. — For Law 15-341, see notes following § 4-1303.51.

§ 4-1371.06. Access to information.

(a) Notwithstanding any other provision of law, immediately upon the request of the Committee and as necessary to carry out the Committee's purpose and duties, the Committee shall be provided, without cost and without authorization of the persons to whom the information or records relate, access to:

- (1) All information and records of any District of Columbia agency, or their contractors, including, but not limited to, birth and death certificates, law enforcement investigation data, unexpurgated juvenile and adult arrest records, mental retardation and developmental disabilities records, medical examiner investigation data and autopsy reports, parole and probation information and records, school records, and information records of social services,

housing, and health agencies that provided services to the child, the child's family, or an alleged perpetrator of abuse which led to the death of the child.

(2) All information and records (including information on prenatal care) of any private health-care providers located in the District of Columbia, including providers of mental health services who provided services to the deceased child, the deceased child's family, or the alleged perpetrator of abuse which led to the death of the child.

(3) All information and records of any private child welfare agency, educational facility or institution, or child care provider doing business in the District of Columbia who provided services to the deceased child, the deceased child's immediate family, or the alleged perpetrator of abuse or neglect which led to the death of the child.

(4) Information made confidential by §§ 4-1302.03, 4-1303.06, 7-219, 7-1203.02, 7-1305.12, 16-2331, 16-2332, 16-2333, 16-2335, and 31-3426.

(b) The Committee shall have the authority to seek information from entities and agencies outside the District of Columbia by any legal means.

(c) Notwithstanding subsection (a)(1) of this section, information and records concerning a current law enforcement investigation may be withheld, at the discretion of the investigating authority, if disclosure of the information would compromise a criminal investigation.

(d) If information or records are withheld under subsection (c) of this section, a report on the status of the investigation shall be submitted to the Committee every 3 months until the earliest of the following events occurs:

(1) The investigation is concluded;

(2) The investigating authority determines that providing the information will no longer compromise the investigation; or

(3) The information or records are provided to the Committee.

(e) All records and information obtained by the Committee pursuant to subsections (a) and (b) of this section pertaining to the deceased child or any other individual shall be destroyed following the preparation of the final Committee report. All additional information concerning a review, except statistical data, shall be destroyed by the Committee one year after publication of the Committee's annual report.

(Oct. 3, 2001, D.C. Law 14-28, § 4606, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 6 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 6 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.07. Subpoena power.

(a) When necessary for the discharge of its duties, the Committee shall have the authority to issue subpoenas to compel witnesses to appear and testify and

to produce books, papers, correspondence, memoranda, documents, or other relevant records.

(b) Except as provided in subsection (c) of this section, subpoenas shall be served personally upon the witness or his or her designated agent, not less than 5 business days before the date the witness must appear or the documents must be produced, by one of the following methods, which may be attempted concurrently or successively:

(1) By a special process server, at least 18 years of age, designated by the Committee from among the staff of the Committee or any of the offices or organizations represented on the Committee; provided, that the special process server is not directly involved in the investigation; or

(2) By a special process server, at least 18 years of age, engaged by the Committee.

(c) If, after a reasonable attempt, personal service on a witness or witness' agent cannot be obtained, a special process server identified in subsection (b) of this section may serve a subpoena by registered or certified mail not less than 8 business days before the date the witness must appear or the documents must be produced.

(d) If a witness who has been personally summoned neglects or refuses to obey the subpoena issued pursuant to subsection (a) of this section, the Committee may report that fact to the Superior Court of the District of Columbia and the court may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the court.

(Oct. 3, 2001, D.C. Law 14-28, § 4607, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 7 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 7 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.08. Confidentiality of proceedings.

(a) Proceedings of the Committee shall be closed to the public and shall not be subject to § 1-207.42, when the Committee is discussing cases of individual child deaths or where the identity of any person, other than a person who has consented to be identified, can be ascertained. Persons other than Committee members who attend any Committee meeting which, pursuant to this section, is not open to the public, shall not disclose what occurred at the meeting to anyone who was not in attendance, except insofar as disclosure is necessary for that person to comply with a request for information from the Committee. Committee members who attend meetings not open to the public shall not disclose what occurred with anyone who was not in attendance (except other Committee members), except insofar as disclosure is necessary to carry out the duties of the Committee. Any party who discloses information pursuant to this subsection shall take all reasonable steps to ensure that the information

disclosed, and the person to whom the information is disclosed, are as limited as possible.

(b) Members of the Committee, persons attending a Committee meeting, and persons who present information to the Committee may not be required to disclose, in any administrative, civil, or criminal proceeding, information presented at or opinions formed as a result of a Committee meeting, except that nothing in this subsection may be construed as preventing a person from providing information to another review committee specifically authorized to obtain such information in its investigation of a child death, the disclosure of information obtained independently of the Committee, or the disclosure of information which is public information.

(c) Information identifying a deceased child, a member of the child's immediate family, the guardian or caretaker of the child, or an alleged or suspected perpetrator of abuse or neglect upon the child, may not be disclosed publicly.

(d) Information identifying District of Columbia government employees or private health-care providers, social service agencies, and educational, housing, and child-care providers may not be disclosed publicly.

(e) Information and records which are the subject of this section may be disclosed upon a determination made in accordance with rules and procedures established by the Mayor.

(Oct. 3, 2001, D.C. Law 14-28, § 4608, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 8 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 8 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.09. Confidentiality of information.

(a) All information and records generated by the Committee, including statistical compilations and reports, and all information and records acquired by, and in the possession of, the Committee are confidential.

(b) Except as permitted by this section, information and records of the Committee shall not be disclosed voluntarily, pursuant to a subpoena, in response to a request for discovery in any adjudicative proceeding, or in response to a request made under subchapter II of Chapter 5 of Title 2, nor shall it be introduced into evidence in any administrative, civil, or criminal proceeding.

(c) Committee information and records may be disclosed only as necessary to carry out the Committee's duties and purposes. The information and records may be disclosed by the Committee to another child fatality review committee if the other committee is governed by confidentiality provisions which afford the same or greater protections as those provided in this subchapter.

(d) Information and records presented to a Committee team during a child

fatality review shall not be immune from subpoena or discovery, or prohibited from being introduced into evidence, solely because the information and records were presented to a team during a child death review, if the information and records have been obtained through other sources.

(e) Statistical compilations and reports of the Committee that contain information that would reveal the identity of any person, other than a person who has consented to be identified, are not public records or information, and are subject to the prohibitions contained in subsection (a) of this section.

(f) The Committee shall compile an Annual Report of Findings and Recommendations which shall be made available to the Mayor, the Council, and the public, and shall be presented to the Council at a public hearing.

(g) Findings and recommendations on child fatalities defined in § 4-1371.05(e) shall be available to the public on request.

(h) At the direction of the Mayor and for good cause, special findings and recommendations pertaining to other specific child fatalities may be disclosed to the public.

(i) Nothing shall be disclosed in any report of findings and recommendations that would likely endanger the life, safety, or physical or emotional well-being of a child, or the life or safety of any other person, or which may compromise the integrity of a Mayor's investigation, a civil or criminal investigation, or a judicial proceeding.

(j) If the Mayor or the Committee denies access to specific information based on this section, the requesting entity may seek disclosure of the information through the Superior Court of the District of Columbia. The name or any other information identifying the person or entity who referred the child to the Department of Human Services or the Metropolitan Police Department shall not be released to the public.

(k) The Mayor shall promulgate rules implementing the provisions of §§ 4-1371.07 and 4-1371.08. The rules shall require that a subordinate agency director to whom a recommendation is directed by the Committee shall respond in writing within 30 days of the issuance of the report containing the recommendations.

(l) The policy recommendations to a particular agency authorized by this section shall be incorporated into the annual performance plans and reports required by subchapter XIV-A of Chapter 6 of Title 1.

(Oct. 3, 2001, D.C. Law 14-28, § 4609, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 9 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 9 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.10. Immunity from liability for providing information to Committee.

Any health-care provider or any other person or institution providing information to the Committee pursuant to this subchapter shall have immunity from liability, administrative, civil, or criminal, that might otherwise be incurred or imposed with respect to the disclosure of the information.

(Oct. 3, 2001, D.C. Law 14-28, § 4610, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 10 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 10 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.11. Unlawful disclosure of information; penalties.

Whoever discloses, receives, makes use of, or knowingly permits the use of information concerning a deceased child or other person in violation of this subchapter shall be subject to a fine of not more than \$1,000. Violations of this subchapter shall be prosecuted by the Corporation Counsel or his or her designee in the name of the District of Columbia. Subject to the availability of an appropriation for this purpose, any fines collected pursuant to this section shall be used by the Committee to fund its activities.

(Oct. 3, 2001, D.C. Law 14-28, § 4611, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 11 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 11 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.12. Persons required to make reports; procedure.

(a) Notwithstanding, but in addition to, the provisions of any law, including § 14-307 and Chapter 12 of Title 7, any person or official specified in subsection (b) of this section who has knowledge of the death of a child who died in the District of Columbia, or a ward of the District of Columbia who died outside the District of Columbia, shall as soon as practicable but in any event within 5 business days report the death or cause to have a report of the death made to the Registrar of Vital Records.

(b) Persons required to report child deaths pursuant to subsection (a) of this section shall include every physician, psychologist, medical examiner, dentist, chiropractor, qualified mental retardation professional, registered nurse, li-

censed practical nurse, person involved in the care and treatment of patients, health professional licensed pursuant to Chapter 12 of Title 3, law-enforcement officer, school official, teacher, social service worker, day care worker, mental health professional, funeral director, undertaker, and embalmer. The Mayor shall issue rules and procedures governing the nature and contents of such reports.

(c) Any other person may report a child death to the Registrar of Vital Records.

(d) The Registrar of Vital Records shall accept the report of a death of a child and shall notify the Committee of the death within 5 business days of receiving the report.

(e) Nothing in this section shall affect other reporting requirements under District law.

(Oct. 3, 2001, D.C. Law 14-28, § 4612, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 12 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 12 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.13. Immunity from liability for making reports.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this subchapter shall have immunity from liability, administrative, civil, and criminal, that might otherwise be incurred or imposed with respect to the making of the report. The same immunity shall extend to participation in any judicial proceeding involving the report. In all administrative, civil, or criminal proceedings concerning the child or resulting from the report, there shall be a rebuttable presumption that the maker of the report acted in good faith.

(Oct. 3, 2001, D.C. Law 14-28, § 4613, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 13 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 13 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

§ 4-1371.14. Failure to make report.

Any person required to make a report under § 4-1371.12 who willfully fails to make the report shall be fined not more than \$100 or imprisoned for not more than 30 days, or both. Violations of § 4-1371.12 shall be prosecuted by

the Corporation Counsel of the District of Columbia, or his or her agent, in the name of the District of Columbia.

(Oct. 3, 2001, D.C. Law 14-28, § 4614, 48 DCR 6981.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 14 of Child Fatality Review Committee Establishment

Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) addition of section, see § 14 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 4-344.01.

CHAPTER 14. PLACEMENT OF CHILDREN IN FAMILY HOMES.

Subchapter I. General

Sec.

- 4-1401. Purpose of subchapter.
- 4-1402. "Child-placing agency" defined; license required.
- 4-1403. [Repealed].
- 4-1404. Application for issuance of licenses.
- 4-1405. Persons and agencies authorized to place children; custody, control and visitation by agencies; confidentiality of records.
- 4-1405.01. Agreements with foreign agencies.
- 4-1406. Parental rights; termination or relinquishment; vesting in agencies or Mayor; exercise in adoption proceedings.
- 4-1407. Refusal to issue, revocation or suspension of licenses; reinstatement or reissuance.

Sec.

- 4-1407.01. Agency required to check enumerated registers for child abuse or neglect; effect of failure of agency to check or obtain information.
- 4-1408. Violations; prosecution.
- 4-1409. Investigations and inspections.
- 4-1410. Authority to charge or receive compensation for services; inability to pay adoption costs.

Subchapter II. Interstate Compact on Placement of Children

- 4-1421. Definitions.
- 4-1422. Authority to enter into and execute Compact.
- 4-1423. Agreements with other states.
- 4-1424. Delinquent children, administrative hearing, judicial review.

Subchapter I. General.

§ 4-1401. Purpose of subchapter.

The purpose of this subchapter is to secure for each child under 16 years of age who is placed in a family home, other than his own or that of a relative within the third degree, such care and guidance as will serve the child's welfare and the best interests of the District of Columbia; and to secure for him custody and care as near as possible to that which should have been given him by his parents.

(Apr. 22, 1944, 58 Stat. 193, ch. 174, § 1.)

Cross references. — Adoption, generally, 1973 Ed., § 32-781.
see § 16-301 et seq.

Prior Codifications. — 1981 Ed., § 32-1001.

CASE NOTES

ANALYSIS

Construction and application.
Necessity for licensure.
Purposes and legislative intent.
Validity.

Construction and application.

Activities conducted by defendant, who was not licensed as a child-placing agency, who entered into an arrangement with a Florida expectant mother whereby she would have her baby in District of Columbia and give it up for adoption through defendant in return for her medical and living expenses and an additional \$2,000 and who twice persuaded mother to stick to the arrangements after she had ex-

pressed a desire to keep her child, had a substantial nexus to governmental interests of District and consequently were intended to be proscribed by Baby Broker Act. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Inasmuch as no governmental interest of District of Columbia sought to be protected by Baby Broker Act was threatened by placement activities of defendant, who arranged lawful Maryland and Virginia adoptions of children born to Maryland residents while in District of Columbia hospitals solely for medical reasons, defendant could not be convicted under section of Act prohibiting placement of child under 16 years of age without having been licensed as a

“child-placing agency”; mere geographic presence arising solely from decisions of the mother or doctor to utilize medical facilities of a District hospital did not constitute a substantial nexus to a governmental interest so as to render prohibition of Act applicable. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Some contact affecting a District of Columbia governmental interest which is protected by Baby Broker Act must be shown before section prohibiting placement of a child under 16 years of age without having been licensed as a “child-placing agency” becomes applicable; extent of contact must rise to level of a “substantial nexus.” D.C. Code §§ 32-781, 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Necessity for licensure.

A lawyer, as such in placing children for adoption, is not exempt from the Baby Broker’s Law notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. D.C. Code 1940, §§ 32-782, 32-785. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

A lawyer is within his rights under the Baby Broker’s Law so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. Code 1940, §§ 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

Purposes and legislative intent.

The purpose of the Baby Broker’s Law is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. Code 1940, §§ 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

Validity.

Baby Broker Act is not unconstitutional as vague and indefinite. D.C. Code 1961, §§ 32-781 to 32-789. *Dobkin v. District of Columbia*, 194 A.2d 657, 1963 D.C. App. LEXIS 303 (App. 1963).

§ 4-1402. “Child-placing agency” defined; license required.

(a) Any person, firm, corporation, association, or public agency that receives or accepts a child under 16 years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency. No child-placing agency shall be maintained in the District of Columbia without a license issued by the Mayor of the District of Columbia; provided, that notwithstanding any provisions of § 4-1404 such a license shall be issued forthwith to any corporation or association chartered by special act of Congress and having under its charter the purposes or powers of a child-placing agency as herein defined.

(b) Any license issued pursuant to this section shall be issued as a Public Health: Child Health and Welfare endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Apr. 22, 1944, 58 Stat. 193, ch. 174, § 2; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983; Apr. 20, 1999, D.C. Law 12-261, § 2003(z), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(f), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 32-1002.

1973 Ed., § 32-782.

Effect of amendments. — D.C. Law 15-38, in subsec. (b), substituted “Public Health: Child Health and Welfare endorsement to a basic

business license under the basic” for “Class A Public Health: Child Health and Welfare endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(f) of

Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 3-59. — Law 3-59 was introduced in Council and assigned Bill No. 3-193, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on January 22, 1980, and February 5, 1980, respectively. Signed by the Mayor on February 26, 1980, it was assigned Act No. 3-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — Law

12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1999, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 4-412.

CASE NOTES

ANALYSIS

Construction and application.

Practice of law.

Purposes and legislative intent.

Construction and application.

Inasmuch as no governmental interest of District of Columbia sought to be protected by Baby Broker Act was threatened by placement activities of defendant, who arranged lawful Maryland and Virginia adoptions of children born to Maryland residents while in District of Columbia hospitals solely for medical reasons, defendant could not be convicted under section of Act prohibiting placement of child under 16 years of age without having been licensed as a "child-placing agency"; mere geographic presence arising solely from decisions of the mother or doctor to utilize medical facilities of a District hospital did not constitute a substantial nexus to a governmental interest so as to render prohibition of Act applicable. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Some contact affecting a District of Columbia governmental interest which is protected by Baby Broker Act must be shown before section prohibiting placement of a child under 16 years of age without having been licensed as a "child-placing agency" becomes applicable; extent of contact must rise to level of a "substantial nexus." D.C. Code §§ 32-781, 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Activities conducted by defendant, who was not licensed as a child-placing agency, who entered into an arrangement with a Florida expectant mother whereby she would have her baby in District of Columbia and give it up for adoption through defendant in return for her

medical and living expenses and an additional \$2,000 and who twice persuaded mother to stick to the arrangements after she had expressed a desire to keep her child, had a substantial nexus to governmental interests of District and consequently were intended to be proscribed by Baby Broker Act. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Practice of law.

A lawyer, as such in placing children for adoption, is not exempt from the Baby Broker's Law notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. D.C. Code 1940, §§ 32-782, 32-785. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

A lawyer is within his rights under the Baby Broker's Law so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. Code 1940, §§ 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

Purposes and legislative intent.

The purpose of the Baby Broker's Law is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. Code 1940, §§ 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

§ 4-1403. Appointment of committee to promulgate rules and regulations; composition and tenure. [Repealed].

Repealed.

(Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3; June 8, 1954, 68 Stat. 246, ch. 273, § 1; Apr. 23, 1980, D.C. Law 3-59, § 2(a), (b), 27 DCR 983; Aug. 21, 1982, D.C. Law 4-141, § 2(a), (b), 29 DCR 2867; Sept. 24, 2010, D.C. Law 18-230, § 201(a), 57 DCR 6951.)

Prior Codifications. — 1981 Ed., § 32-1003.

1973 Ed., § 32-783.

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

Legislative history of Law 4-141. — For legislative history of D.C. Law 4-141, see His-

torical and Statutory Notes following § 4-1407.01.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Editor's notes. — Advisory group to committee established: See Commissioner's Order No. 71-13, dated January 19, 1971.

§ 4-1404. Application for issuance of licenses.

(a) An application for a license as a child-placing agency shall be made to the Mayor on forms provided by him and in the manner prescribed. Before such license is issued the Department of Health shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Department of Health is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, the Department of Health shall recommend to the Mayor that a license be issued.

(b) A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Mayor upon recommendation of the Department of Health.

(c) All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than 3 successive years.

(Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4; June 8, 1954, 68 Stat. 247, ch. 273, § 2; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983; Sept. 24, 2010, D.C. Law 18-230, § 201(b), 57 DCR 6951.)

Section references. — This section is referred to in § 4-1402.

Prior Codifications. — 1981 Ed., § 32-1004.

1973 Ed., § 32-784.

Effect of amendments. — D.C. Law 18-230, in subsecs. (a) and (b), substituted "Department of Health" for "Department of Human Services"; and, in subsec. (a), substituted "the Department of Health" for "the Department"

and "the Department of Health" for "said Department".

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred

to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The execu-

tive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 4-1405. Persons and agencies authorized to place children; custody, control and visitation by agencies; confidentiality of records.

(a) No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under 16 years of age in a family home or for adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care, custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child welfare agency or terminated by the order of a court of competent jurisdiction.

(b) Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child; provided, that legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

(c) Records which are deemed confidential shall not be available for inspection by nor disclosed to any person, firm, corporation, association, or public agency, except that such records shall be available for inspection by authorities authorized by law to license child-placing agencies. Such records shall not be subject to judicial subpoena in collateral proceedings, except that the licensed child-placing agency and the Mayor in accordance with rules and regulations promulgated hereunder, may make such records, or any information contained in such records, available:

(1) When the Mayor or such agency determines that any information contained in such records shall promote or protect the interest and welfare of any child the Mayor or such agency has served; and

(2) For the purpose of research if adequate safeguards are taken against

the disclosure or publication in any manner of the identity of any person contained in such records.

(Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5; June 8, 1954, 68 Stat. 247, ch. 273, § 3; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Prior Codifications. — 1981 Ed., § 32-1005.
1973 Ed., § 32-785.

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

CASE NOTES

ANALYSIS

Construction and application.
Violations of law.

Construction and application.

Some contact affecting a District of Columbia governmental interest which is protected by Baby Broker Act must be shown before section prohibiting placement of a child under 16 years of age without having been licensed as a "child-placing agency" becomes applicable; extent of contact must rise to level of a "substantial nexus." D.C. Code §§ 32-781, 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Inasmuch as no governmental interest of District of Columbia sought to be protected by Baby Broker Act was threatened by placement activities of defendant, who arranged lawful Maryland and Virginia adoptions of children born to Maryland residents while in District of Columbia hospitals solely for medical reasons, defendant could not be convicted under section of Act prohibiting placement of child under 16 years of age without having been licensed as a "child-placing agency"; mere geographic presence arising solely from decisions of the mother or doctor to utilize medical facilities of a District hospital did not constitute a substantial nexus to a governmental interest so as to render prohibition of Act applicable. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Violations of law.

Activities conducted by defendant, who was not licensed as a child-placing agency, who entered into an arrangement with a Florida

expectant mother whereby she would have her baby in District of Columbia and give it up for adoption through defendant in return for her medical and living expenses and an additional \$2,000 and who twice persuaded mother to stick to the arrangements after she had expressed a desire to keep her child, had a substantial nexus to governmental interests of District and consequently were intended to be proscribed by Baby Broker Act. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Testimony of official, who stated that records did not indicate that defendant was licensed as a child-placing agency and who identified all such agencies in District of Columbia of which defendant was not one, was sufficient to support finding that defendant, who was charged with placement of a child under 16 years of age without having been licensed as a "child-placing agency," was not licensed as a "child-placing agency." D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Broker Act. D.C. Code 1951, §§ 32-782, 32-785. *Anderson v. District of Columbia*, 154 A.2d 717, 1959 D.C. App. LEXIS 308 (Cr.App. 1959).

§ 4-1405.01. Agreements with foreign agencies.

Notwithstanding the provisions of this subchapter, the Mayor is authorized to enter into agreements with any person, firm, corporation, association, or public agency licensed or authorized by a state or country for the care and placement of minors, permitting such person, firm, corporation, association, or public agency to place nonresident children in foster or adopting homes in the

District of Columbia. The Mayor shall act pursuant to regulations promulgated as provided in § 4-1403 [repealed].

(Apr. 22, 1944, ch. 174, § 5A, as added June 8, 1954, 68 Stat. 247, ch. 273, § 4; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Prior Codifications. — 1981 Ed., § 32-1006.
1973 Ed., § 32-785a.

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

§ 4-1406. Parental rights; termination or relinquishment; vesting in agencies or Mayor; exercise in adoption proceedings.

(a)(1) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child have been terminated by order of the court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency.

(2) For purposes of this section, "licensed child-placing agency" shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any state, territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province or other governmental division of any foreign country for the care and placement of minors.

(b) Repealed.

(c) Any relinquishment of parental rights executed by a single natural parent or by both natural parents, other than by court order as provided in this subsection, may be automatically revoked by a verified writing executed by the single parent or both parents respectively and submitted to the agency within 14 calendar days of executing a legal relinquishment. Where both natural parents execute a relinquishment of parental rights, other than by court order, either parent may automatically revoke his or her relinquishment of parental rights by executing a verified writing submitted to the agency within 14 calendar days of executing the relinquishment. The rights of the parent not seeking custody shall be terminated and such parent shall not have the power to obstruct the revocation. If the 14th day falls on a Saturday, Sunday, or legal holiday, the deadlines for filing the revocation shall be extended to the next working day. No relinquishment of parental rights shall be considered final until the revocation period has expired with no revocation having been made by the natural parent. Automatic revocation of relinquishment can be exercised only once.

(d) A waiting period of 30 days from the date of revocation of the first relinquishment shall expire before a second relinquishment can be executed. A relinquishment, if exercised a second time, shall be irrevocable, unless an

additional right to revoke is granted by court order upon a finding by the court that the relinquishment was not given voluntarily, e.g., the relinquishment was induced by fraud, coercion, material mistake or other factors that bear on a determination of voluntariness.

(e) Any relinquishment of parental rights and revocation thereof may be transferred from one licensed child-placing agency to another child-placing agency in which case the second agency shall assume all the rights and duties of the first agency.

(f) Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under 16 years of age, unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least 1 witness. Each transfer or relinquishment of parental rights and any revocation of said relinquishment shall be recorded and filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court for the District of Columbia within 20 days after the expiration of the revocation period. Any subsequent relinquishment shall be filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court of the District of Columbia within 30 days after the date of relinquishment. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said Court.

(g) The relinquishment form used by the child-placing agency shall contain the following notice to the parent in clear and conspicuous language:

(1) Notice to the relinquishing parent of the parent's automatic right of revocation within 10 calendar days from the date of relinquishment;

(2) Notice that a relinquishment if exercised a second time shall be irrevocable;

(3) Notice that the child-placing agency has a statutory obligation to file all notices of the relinquishment and revocation thereof with the Superior Court for the District of Columbia.

(h) Relinquishing parents shall be orally advised of their rights as described in subsection (g) of this section. The child-placing agency shall orally advise the relinquishing parent as to the nature and consequences resulting from the execution of the relinquishment document prior to relinquishment.

(i) The Mayor or his designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquishment taken by the Mayor or his designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency.

(Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5; Apr. 11, 1956, 70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413,

Pub. L. 86-177, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(i); Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983; Apr. 4, 1984, D.C. Law 5-72, §§ 2, 3, 31 DCR 732; Sept. 24, 2010, D.C. Law 18-230, § 201(c), 57 DCR 6951.)

Cross references. — Public welfare supervision, adoption subsidy payments, see § 4-301.

Public welfare supervision, dependent children, mayor powers regarding custody, placement, and adoption, see § 4-302.

Public welfare supervision, powers of mayor over dependent children, see § 4-114.

Family court, original jurisdiction, see § 11-1101.

Section references. — This section is referred to in §§ 4-342 and 16-304.

Prior Codifications. — 1981 Ed., § 32-1007.

1973 Ed., § 32-786.

Effect of amendments. — D.C. Law 18-230 repealed subsec. (b); and, in subsec. (c), substituted "14" for "10" in two places and substituted "14th day" for "10th day". Prior to repeal, subsec. (b) read as follows: "(b) No relinquishment of parental rights shall be made within the first 72 hours after birth. Prior to any relinquishment any corporation, association, or public agency that conducts a licensed child-

placing agency shall provide counseling, by a professional social worker, to the relinquishing parent regarding the alternative services available in addition to psychological and emotional counseling to both the parent and the child."

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

Legislative history of Law 5-72. — Law 5-72 was introduced in Council and assigned Bill No. 5-135, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 3, 1984, and January 31, 1984, respectively. Signed by the Mayor on February 16, 1984, it was assigned Act No. 5-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

References in text. — The reference to "this subsection," in the first sentence in subsection (c), does not reflect the amendment of this section by D.C. Law 5-72. The reference should probably now read "subsection (a) of this section."

CASE NOTES

ANALYSIS

Advice of rights.

—Mothers, advice of rights.

—Unwed fathers.

Children with mental illness.

Consent of parties.

—Binding effect, consent of parties.

—In general.

—Revocation, consent of parties.

—Unwed fathers, consent of parties.

In general.

Powers and duties of judiciary.

Review.

Unwed fathers, generally.

Advice of rights.

— Mothers, advice of rights.

After mother signed form relinquishing her parental rights, which did not advise her that revocation of relinquishment must be in writing, hearing was required to determine whether mother had been advised of verified writing requirement by someone else and had subsequently decided to revoke relinquishment and effectively communicated that decision. D.C. Code 1981, § 32-1007(g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Relinquishment form provided to mother by Department of Human Services, which did not contain notice that revocation within ten-day statutory period must be contained in "verified writing," did not give mother sufficient notice of her right to automatically revoke relinquishment of her parental rights. D.C. Code 1981, § 32-1007(c, g), (g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

— Unwed fathers.

Information which child placement agency furnished to unwed father failed to provide minimum notice required by due process to enable father to assert his right to custody of child at meaningful time and in meaningful manner, where letters sent by agency to African father did not inform father of his basic right to seek custody of child and of his right to participate at court hearing that would be scheduled to determine permanent placement of child, but rather merely told father that he had right to acknowledge or deny paternity and that effort had to be made to inform father of plans for adoption, and provided father with adoption consent forms. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.),

581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Child placement agency's role as state actor in adoption process requires that it provide natural father with a certain minimum amount of information concerning his procedural rights in adoption proceeding. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father was denied his procedural rights under statute when court failed to provide him with "immediate" notice of prospective adoptive parents' filing of petition to adopt his son. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Child placement agency violated unwed father's constitutional right to procedural due process by failing to use due diligence to find father in order to provide timely service of required immediate, official notice of adoption proceedings; agency did not obtain addresses of father's relatives, did not tell court of other possible addresses for father, did not attempt to update information upon being told by mother that father's address could have changed and upon learning from father that he was about to move to another country. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Children with mental illness.

Although charitable corporation was organized to accept custody and control of children brought into the country for adoption and was authorized to do any acts which would prevent such individuals from becoming public charges, such objectives do not, of themselves, create a parental relation between the committee and those children who might come into its care and did not create third-party rights in District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of mentally retarded orphan who had been brought into the United States by the corporation for purpose of adoption. D.C. Code § 29-201 et seq. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Where only by default on collapse of the adoption did custody of mentally retarded child, who was brought to the United States for purposes of adoption, fall to the charitable committee which had arranged for the adoption, custody had been maintained because of inability to locate a permanent arrangement because of the severe infirmity and committee had not been a penurious provider during its

custodianship, doctrine of equitable estoppel furnished no basis for claim of reimbursement against committee for maintenance of child during involuntary commitment to District of Columbia hospital for the mentally ill. D.C. Code § 21-586. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Grant to a child-placing agency of parental rights, as opposed to parental duties, is primarily for purpose of vesting agency with authority to consent to adoption and does not, of its own force, expand schedule of liabilities in statute governing District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill, at least where the agency has acquired its most recent custodial relation by default of an adoption proceeding outside the District and has been unable to find an alternative placement because of a disability unknown at time when the child was released to the preadoptive family. D.C. Code §§ 21-586, 32-786. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Consent of parties.

— Binding effect, consent of parties.

Absent consent of all the parties, only "cause" justifying court-ordered revocation of natural parent's relinquishment of parental rights once filed with the court is a conclusion that relinquishment was not given voluntarily, that is, has been induced by fraud, coercion, material mistake, or other factors. D.C. Code § 32-786(a). L. v. Lutheran Social Services of National Capital Area, Inc., 418 A.2d 133, 1980 D.C. App. LEXIS 336 (1980).

— In general.

As a prerequisite for either licensed child placement agency, commissioner, or guardian of the person of a minor to exercise power to consent to adoption, parental rights must have been judicially terminated. D.C. Code §§ 3-117(3), 16-301 et seq., 16-2301(20)(D), (22), 32-786. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Subsection (c) is a departure from pre-existing law which permitted revocation only upon written consent of all parties to relinquishment or court order. Of particular importance is the council's rejection of the view that the child's stability is the paramount consideration when a parent seeks to revoke a relinquishment. Instead, the council adopted a policy that children should be raised by their birth parents notwithstanding the emphasis of the courts on stability for the child. C.K.C. v. Children's Adoption Resource Exch., 118 WLR 1305 (Super. Ct. 1990).

— Revocation, consent of parties.

Mother was not necessarily precluded from effectuating timely oral revocation of her relin-

quishment of her parental rights following Department of Human Services' failure to include in its relinquishment form notice of revocation rights calling for verified writing within ten days. D.C. Code 1981, § 32-1007(c, g), (g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

— Unwed fathers, consent of parties.

Unwed father did not have responsibility to keep child placement agency informed of his current address if he wished to have prompt notice of adoption proceeding, where there was no indication whatsoever in any information which agency sent to father that there was pending judicial proceeding, let alone that agency and father were "parties" to that proceeding, but instead father only knew that agency was seeking his consent to adoption of his child. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father's "opportunity interest" in developing relationship with his child remained intact, and preference for custody by father arose in adoption proceeding, despite natural father's failure to take action with respect to child after learning that mother desired to place child for adoption, where notice given to father of legal procedures involved in adoption process and child placement agency's role in those procedures was insufficient, father had not been given immediate notice of adoption petition, and agency did not undertake diligent efforts to ascertain father's whereabouts. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const. Amends. 5, 14; D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

In general.

Parent-child relationship is not totally immune from governmental interference. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Although surrogate parenting contracts are illegal in the District of Columbia as of March 17, 1993, since the filing of petitions predated that date, this policy played no part in the decision. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

The transfer of all parental rights and responsibilities with to an agency is tantamount to placing with that agency "the legal care, custody, or control" of the child pursuant to § 16-301(b)(3). In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Powers and duties of judiciary.

Superior Court did not have jurisdiction over adoption proceedings in which surrogate mother who had been impregnated with sperm

of natural father agreed to relinquish parental rights to adoption agency licensed to do business in District of Columbia, father reserved all parental rights, and father consented to adoption by his wife; "legal care, custody, or control" of proposed adoptees never passed to child-placing agencies. D.C. Code 1981, §§ 16-301(b)(3), 32-1007(a)(1). In re S.G., 663 A.2d 1215, 1995 D.C. App. LEXIS 289 (1995).

Superior Court did not have jurisdiction over adoption proceedings in which surrogate mother who had been impregnated with sperm of natural father agreed to relinquish parental rights to adoption agency licensed to do business in District of Columbia, father reserved all parental rights, and father consented to adoption by his wife; "legal care, custody, or control" of proposed adoptees never passed to child-placing agencies. D.C. Code 1981, §§ 16-301(b)(3), 32-1007(a)(1). In re S.G., 663 A.2d 1215, 1995 D.C. App. LEXIS 289 (1995).

Practice of Family Division of providing notice to interested parties only upon issuance of show cause order in adoption proceeding violates statute commanding that due notice of pending adoption proceeding be sent "immediately" to natural parents. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, § 16-306(a). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

As long as there exists a statutory procedure to accomplish termination of parental rights, district and superior court in the District of Columbia must follow that rule despite its administrative shortcoming. D.C. Code § 16-304. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Superior court's *parens patriae* power was insufficient authority for its enactment of rule permitting termination of parental rights in non-adoption proceedings. D.C. Code SCR, Neglect Rule 18(c). In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Although statute which permits granting of adoption over parental consent where the parent has abandoned the child permits a court to terminate parental rights, it may do so only in the context of an adoption proceeding, the sine qua non of which is that the adoptive parents petition the court for the child. D.C. Code § 16-304. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

The jurisdictional prerequisite is satisfied when an adoption petition is filed by petitioners who cannot meet the residency requirements of § 16-301(b)(1) or (2). In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Review.

Remand of adoption petition was necessary, where trial court failed to apply best interest standard of adoption statute as interpreted to include presumption in favor of fit natural

parent over stranger to child, but instead found that best interest of child warranted adoption due to psychological impact on child from transfer from prospective adoptive parents to natural father. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Judgment of trial court that natural mother freely and voluntarily executed papers relinquishing her parental rights, with full understanding of adoption process and finality of her act was not plainly wrong or without evidence to support it. D.C. Code §§ 17-305(a), 32-786(a). *L. v. Lutheran Social Services of National Capital Area, Inc.*, 418 A.2d 133, 1980 D.C. App. LEXIS 336 (1980).

Unwed fathers, generally.

Adoption statute incorporates into best inter-

est of child standard a preference for fit unwed father who has grasped his opportunity interest in seeking relationship with child, which preference can be overridden only by showing by clear and convincing evidence that it is in best interest of child to be placed with unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

To satisfy unwed father's constitutional right to due process prior to allowing adoption of child, child placement agency would have to engage in due diligence to locate father. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

§ 4-1407. Refusal to issue, revocation or suspension of licenses; reinstatement or reissuance.

The Mayor may refuse to reissue or may revoke or suspend the license of any child-placing agency after full hearing on proof of violation of any provisions of this subchapter or the rules and regulations promulgated hereunder. Before any license shall be suspended or revoked the holder thereof shall have notice in writing of the charge or charges and shall, at the date and place specified in said notice, which shall be at least 5 days after the service thereof, be given a hearing by said Mayor, or his designated agents, with a full opportunity to produce testimony in his, her, or its behalf. Any licensee whose license has been suspended or revoked may, after the expiration of 90 days, on application to the said Mayor, have the same reinstated or reissued upon satisfactory proof that the disqualification has ceased.

(Apr. 22, 1944, 58 Stat. 195, ch. 174, § 7; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Cross references. — Administrative procedure, judicial review, see § 2-510.

Administrative procedure, supplemental procedures, suppression of conflicting laws, see § 2-501.

Prior Codifications. — 1981 Ed., § 32-1008.

1973 Ed., § 32-787.

Legislative history of Law 3-59. — For legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

§ 4-1407.01. Agency required to check enumerated registers for child abuse or neglect; effect of failure of agency to check or obtain information.

Prior to placement of a child in a family home, a child-placing agency licensed in the District of Columbia and the Department of Human Services shall:

(1) Obtain written consent from applicants for release of information from:

(A) The D.C. Child Protection Register established under subchapter I of Chapter 13 of this title;

(B) Registers of child abuse and neglect located in all states, territories and possessions of the United States in which the applicant has resided within the previous 5 years; and

(C) If applicable, from any registers maintained by any branch of the armed forces of the United States.

(2) Check the proposed placement of a child in a family home with the Child Protection Register and, where applicable, with other registers pursuant to subparagraphs (B) and (C) of paragraph (1) of this section for the purpose of determining whether there has been a report of child abuse or neglect. Failure of an agency to make such check prior to placement may result in suspension, revocation, or refusal to renew that agency's child placement license. Failure of any agency to obtain information from a register due to policies and procedures in those jurisdictions other than the District of Columbia or the various branches of the armed forces of the United States, prohibiting release of such information, shall not constitute a violation under this paragraph.

(Apr. 22, 1944, 58 Stat. 193, § 7a, as added Aug. 21, 1982, D.C. Law 4-141, § 2(c), 29 DCR 2867.)

Cross references. — Child abuse and neglect, access to register, restrictions on release of information, see § 4-1302.03.

Prior Codifications. — 1981 Ed., § 32-1008.1.

Legislative history of Law 4-141. — Law 4-141 was introduced in Council and assigned

Bill No. 4-164, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 25, 1982, and June 8, 1982, respectively. Signed by the Mayor on June 30, 1982, it was assigned Act No. 4-207 and transmitted to both Houses of Congress for its review.

§ 4-1408. Violations; prosecution.

Any person, firm, corporation, association, or public agency who conducts a child-placing agency without a license as provided for in this chapter or who violates any of the provisions of this subchapter shall, upon conviction, be fined not more than \$300 or imprisoned for not more than 90 days, or both. Prosecution for violations of such sections shall be upon information in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Apr. 22, 1944, 58 Stat. 195, ch. 174, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 444, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 32-1009.

1973 Ed., § 32-788.

Legislative history of Law 6-42. — Law

6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Defenses.

Police powers.

Practice of law.

Right to trial by jury.

Unauthorized acts.

Weight and sufficiency of evidence.

Defenses.

In prosecution of defendant for placement of a child under 16 years of age without having been licensed as a "child-placing agency," defendant failed to satisfy his burden of proving affirmative defense that he was a relative within the third degree of the child. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Police powers.

Activities conducted by defendant, who was not licensed as a child-placing agency, who entered into an arrangement with a Florida expectant mother whereby she would have her baby in District of Columbia and give it up for adoption through defendant in return for her medical and living expenses and an additional \$2,000 and who twice persuaded mother to stick to the arrangements after she had expressed a desire to keep her child, had a substantial nexus to governmental interests of District and consequently were intended to be proscribed by Baby Broker Act. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Inasmuch as no governmental interest of District of Columbia sought to be protected by Baby Broker Act was threatened by placement activities of defendant, who arranged lawful Maryland and Virginia adoptions of children born to Maryland residents while in District of Columbia hospitals solely for medical reasons, defendant could not be convicted under section of Act prohibiting placement of child under 16 years of age without having been licensed as a "child-placing agency"; mere geographic presence arising solely from decisions of the mother or doctor to utilize medical facilities of a District hospital did not constitute a substantial nexus to a governmental interest so as to render prohibition of Act applicable. D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Some contact affecting a District of Columbia governmental interest which is protected by Baby Broker Act must be shown before section

prohibiting placement of a child under 16 years of age without having been licensed as a "child-placing agency" becomes applicable; extent of contact must rise to level of a "substantial nexus." D.C. Code §§ 32-781, 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

Practice of law.

A lawyer, as such in placing children for adoption, is not exempt from the Baby Broker's Law notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. D.C. Code 1940, §§ 32-782, 32-785. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

A lawyer is within his rights under the Baby Broker's Law so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. Code 1940, §§ 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

Right to trial by jury.

Defendant charged with violating Baby Broker Act for which maximum penalty was fine of up to \$300 or imprisonment up to ninety days, or both, was not entitled to jury trial. D.C. Code 1961, §§ 11-715a, 32-781 to 32-789, 32-788. *Dobkin v. District of Columbia*, 194 A.2d 657, 1963 D.C. App. LEXIS 303 (App. 1963).

Unauthorized acts.

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Broker Act. D.C. Code 1951, §§ 32-782, 32-785. *Anderson v. District of Columbia*, 154 A.2d 717, 1959 D.C. App. LEXIS 308 (Cr.App. 1959).

Weight and sufficiency of evidence.

Evidence authorized conviction of violation of

the Baby Broker's Law. Code 1940, § 32-781 to 32-789. *Goodman v. District of Columbia*, 50 A.2d 812, 1947 D.C. App. LEXIS 104 (Cr.App. 1947).

Testimony of official, who stated that records did not indicate that defendant was licensed as a child-placing agency and who identified all such agencies in District of Columbia of which

defendant was not one, was sufficient to support finding that defendant, who was charged with placement of a child under 16 years of age without having been licensed as a "child-placing agency," was not licensed as a "child-placing agency." D.C. Code § 32-785. *Galison v. District of Columbia*, 402 A.2d 1263, 1979 D.C. App. LEXIS 392 (1979).

§ 4-1409. Investigations and inspections.

The Department of Health is authorized to make such investigations and inspections as are necessary to carry out the provisions of this subchapter.

(Apr. 22, 1944, 58 Stat. 195, ch. 174, § 9; Sept. 24, 2010, D.C. Law 18-230, § 201(d), 57 DCR 6951.)

Prior Codifications. — 1981 Ed., § 32-1010.

1973 Ed., § 32-789.

Effect of amendments. — D.C. Law 18-230 substituted "Department of Health" for "Department of Human Services".

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided

that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 4-1410. Authority to charge or receive compensation for services; inability to pay adoption costs.

(a)(1) Except as provided in paragraph (2) of this subsection, neither the Mayor nor a child-placing agency authorized to perform services in connection with placement of a child in a family home for adoption may make or receive any charge or compensation for these services.

(2) A child-placing agency may charge an adoptive parent a reasonable fee if the child-placing agency is operating in the District of Columbia exclusively for religious purposes or as a nonprofit organization, pursuant to section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)), and no part of its net earnings inure to the benefit of any private shareholder or individual.

(b)(1) A child-placing agency providing domestic or international adoption services that is authorized to charge a fee pursuant to subsection (a) of this section shall develop a sliding-fee scale based on the per capita income of the applicant and provide each applicant with:

- (A) Its fee and refund policy;
- (B) An estimate of the agency's maximum fee for specific services;
- (C) Information regarding available public and private subsidies;
- (D) Its sliding income fee scale; and
- (E) A complete list of the services that it will provide at each stage of the adoption process.

(2) If a child-placing agency that charges a fee fails to implement and to maintain a sliding-fee scale as required by this subchapter, or rules issued pursuant to this subchapter, the failure shall be grounds for suspension or revocation of its license.

(c) Except for a reasonable, nonrefundable administrative fee, a child-placing agency shall not retain the fee paid by an adoptive parent unless the child-placing agency has provided the service.

(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this section, including the process for suspension and revocation of the license required to maintain a child-placing agency.

(Apr. 22, 1944, ch. 174, § 12; June 8, 1954, 68 Stat. 248, ch. 273, § 6; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983; Sept. 24, 2010, D.C. Law 18-230, § 201(e), 57 DCR 6951.)

Prior Codifications. — 1981 Ed., § 32-1011.

1973 Ed., § 32-790.

Effect of amendments. — D.C. Law 18-230 rewrote the section.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-114 rewrote the section to read as follows:

"Sec. 12. (a) Neither the Mayor nor a child-placing agency authorized to perform services in connection with placement of a child in a family home for adoption may make or receive any charge or compensation for these services; except, that a child-placing agency that is operating in the District of Columbia exclusively for religious purposes or as a nonprofit organization pursuant to section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)), and no part of its net earnings inure to the benefit of any private shareholder or individual, may charge an adoptive parent a reasonable fee.

"(b)(1) A child-placing agency providing domestic or international adoption services that is authorized to charge a fee pursuant to subsection (a) of this section shall develop a sliding fee scale based on the per capita family income size of the applicant and provide each applicant with:

- "(A) Its fee and refund policy;
- "(B) An estimate of the agency's maximum fee for specific services;
- "(C) Information regarding available public and private subsidies;

"(D) Its sliding fee scale; and

"(E) A complete list of the services that it will provide at each stage of the adoption process.

"(2) The failure of a child-placing agency that charges a fee to implement and to maintain a sliding fee scale as required by this section shall be grounds for suspension or revocation of its license. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this paragraph.

"(c) Except for a reasonable, nonrefundable administrative fee, a child-placing agency shall not retain the fee paid by an adoptive parent unless the child-placing agency has provided the service."

Section 4(b) of D.C. Law 18-114 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary provisions requiring, on an emergency basis, criminal background investigations for individuals residing in foster family homes or other homes in which children are placed by order, see §§ 2-15 of the Criminal Background Investigation for the Protection of Children Emergency Act of 1998 (D.C. Act 12-431, September 4, 1998, 45 DCR 5915), and §§ 2-15 of the Criminal Background Investigation for the Protection of Children Legislative Review Emergency Act of 1998 (D.C. Act 12-503, January 27, 1999, 45 DCR 8134).

For temporary (90 day) amendment of section, see § 2 of Private Adoption Fee Emergency Amendment Act of 2009 (D.C. Act 18-252, December 17, 2009, 57 DCR 36).

Legislative history of Law 3-59. — For

legislative history of D.C. Law 3-59, see Historical and Statutory Notes following § 4-1402.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-301.

Subchapter II. Interstate Compact on Placement of Children.

§ 4-1421. Definitions.

The term “appropriate authority” as used in this compact means, with reference to the District of Columbia, the Director of the Child and Family Services Agency for children who have been abused or neglected and the Director of the Department of Human Services for all other children.

(Sept. 20, 1989, D.C. Law 8-30, § 3, 36 DCR 4744; Apr. 4, 2001, D.C. Law 13-277, § 3(d), 48 DCR 2043.)

Prior Codifications. — 1981 Ed., § 32-1041.

Effect of amendments. — D.C. Law 13-277 rewrote the section which prior thereto read:

“The term ‘appropriate authority’ as used in this compact means, with reference to the District, the Director of the Department of Human Services.”

Legislative history of Law 8-30. — Law 8-30, “Interstate Compact on the Placement of Children Authorization Act of 1989,” was introduced in Council and assigned Bill No. 8-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-277. — For D.C. Law 13-277, see notes following § 4-1301.02.

Editor’s notes. — For applicability of D.C. Law 13-277, see note following § 4-1303.01a.

Complementary Legislation: Ala.—Code 1975, §§ 44-2-20 to 44-2-26. Alaska—AS 47.70.010 to 47.70.080. Ariz.—A.R.S. §§ 8-548 to 8-548.06. Ark.—A.C.A. §§ 9-29-201 to 9-29-208. Cal.—West’s Ann.Cal.Fam.Code, §§ 7900 to 7912. Colo.—West’s C.R.S.A. §§ 24-60-1801 to 24-60-1803. Conn.—C.G.S.A. § 17a-175 to 17a-182. Del.—31 Del.C. § 381. D.C.—D.C. Official Code, 2001 Ed. §§ 4-1421 to 4-1424. Fla.—West’s F.S.A. §§ 409.401 to 409.405.

Ga.—O.C.G.A. §§ 39-4-1 to 39-4-10. Hawaii—H.R.S. §§ 350E-1 to 350E-9. Idaho—I.C. §§ 16-2101 to 16-2107. Ill.—S.H.A. 45 ILCS 15/0.01 to 1%. Ind.—West’s A.I.C. 31-28-4-1 to 31-28-4-8. Iowa—I.C.A. §§ 232.158 to 232.168. Kan.—K.S.A. 38-1201 to 38-1206. Ky.—KRS 615.030 to 615.050, 615.990. La.—LSA-Ch.C. arts. 1608 to 1622. Maine—22 M.R.S.A. §§ 4251 to 4269. Md.—Code, Family Law, §§ 5-601 to 5-611. Mass.—M.G.L.A. c. 119 App., §§ 2-1 to 2-8. Mich.—M.C.L.A. §§ 3.711 to 3.717. Miss.—Code 1972, §§ 43-18-1 to 43-18-17. Mo.—V.A.M.S. §§ 210.620 to 210.640. Mt.—M.C.A. 41-4-101 to 41-4-109. Nev.—N.R.S. 127.320 to 127.350. N.H.—RSA 170-A:1 to 170-A:6. N.J.—N.J.S.A. 9:23-5 to 9:23-17. N.M.—NMSA 1978, §§ 32A-11-1 to 32A-11-7. N.Y.—McKinney’s Social Services Law, § 374-a. N.C.—G.S. §§ 7B-3800 to 7B-3806. N.D.—NDCC 14-13-01 to 14-13-08. Ohio—R.C. §§ 5103.23 to 5103.237. Okl.—10 Okl.St. Ann. §§ 571 to 576. Ore.—ORS 417.200 to 417.260. Pa.—62 P.S. §§ 761 to 765. R.I.—Gen.Laws. 1956, §§ 40-15-1 to 40-15-10. S.C.—Code 1976, §§ 63-9-2200 to 63-9-2290. S.D.—SDCL 26-13-1 to 26-13-9. Tenn.—T.C.A. §§ 37-4-201 to 37-4-207. Tex.—V.T.C.A., Family Code §§ 162.101 to 162.107. Utah—U.C.A. 1953, 62A-4a-701 to 62A-4a-709. Vt.—33 V.S.A. §§ 5901 to 5910. Virgin Islands—34 V.I.C. §§ 121 to 127. Va.—Code 1950, §§ 63.2-1000, 63.2-1100 to 63.2-1105. Wash.—West’s RCWA 26.34.010 to 26.34.080. W.Va.—Code, 49-2A-1, 49-2A-2. Wis.—W.S.A. 48.988, 48.989. Wyo.—Wyo.Stat. Ann. §§ 14-5-101 to 14-5-108.

CASE NOTES

In general.

Interstate Compact on the Placement of Children (ICPC) is a uniform law that governs the

placement of children across state lines, which has been adopted by all 50 states, the District of Columbia, and the Virgin Islands. In re T.M.J.,

878 A.2d 1200, 2005 D.C. App. LEXIS 381 (2005).

§ 4-1422. Authority to enter into and execute Compact.

The Mayor of the District of Columbia (“District”) is authorized to execute a compact on behalf of the District with any state that legally joins the compact in the form substantially as follows:

ARTICLE I. Purpose and policy.

It is the purpose and policy of the party states to cooperate in the interstate placement of children to the end that:

(1) Each child who requires placement shall receive the maximum opportunity to be placed in a suitable environment with a person or institution that has appropriate qualifications and facilities to provide necessary and desirable care.

(2) The appropriate authority in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement in order to promote full compliance with applicable requirements for the protection of the child.

(3) The appropriate authority of the sending state may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(4) Appropriate jurisdictional arrangements for the care of children are promoted.

ARTICLE II. Definitions.

For the purposes of this compact the term:

(1) “Child” means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) “Placement” means the arrangement for the care of a child in a family, boarding home, or child-care agency or institution, but does not include an institution that cares for the mentally ill, mentally defective, or epileptic, an institution primarily educational in character, or a hospital or other medical facility.

(3) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority, a private person, or an agency, and whether for placement with a state or local public authority or private agency or person.

(4) “Sending state” means a party state, including the District of Columbia, an officer or employee of the sending state, a subdivision of a party state, an officer, employee, or court of the party state, or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

ARTICLE III. Conditions for placement.

(a) No sending state shall send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or prior to a possible

adoption, unless the sending state complies with each requirement set forth in this compact and applicable laws of the receiving state that govern the placement of children.

(b) Prior to sending, bringing, or causing a child to be sent or brought into a receiving state for placement in foster care or prior to a possible adoption, the sending state shall furnish the appropriate authority in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date, and place of birth of the child;
- (2) The identity and address of the parents or legal guardian;
- (3) The name and address of the person, agency, or institution to or which the sending state proposes to send, bring, or place the child; and
- (4) A full statement of the reason for the proposed action and evidence of the authority for the proposed placement.

(c) The appropriate authority in a receiving state who receives notice pursuant to subsection (b) of this article may request of the sending state, and shall be entitled to receive, supporting or additional information necessary to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate authority in the receiving state notifies the sending state, in writing, that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for illegal placement.

Any person or state who sends, brings, or causes to be sent or brought into a receiving state a child in violation of the terms of this compact may be punished or subjected to a penalty in either the sending or receiving state in accordance with the laws of each. In addition to liability for any punishment or penalty, each violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending state that authorizes it to place or care for children.

ARTICLE V. Retention of jurisdiction.

(a) The sending state shall retain jurisdiction over the child sufficient to determine all matters that relate to the custody, supervision, care, treatment, and disposition of the child that it would have had if the child had remained in the sending state, until the child is adopted, reaches the age of majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. The sending state shall continue to have financial responsibility for the support and maintenance of the child during the period of the placement. Nothing contained in this compact shall defeat a claim of jurisdiction by a receiving state to deal with an act of delinquency or crime committed in the receiving state.

(b) When the sending state is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state

to provide for the performance of any service with respect to the child by the receiving state as agent for the sending state.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in the receiving state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending state without relieving the responsibility set forth in subsection (a) of this article.

ARTICLE VI. Institutional care of delinquent children.

A child adjudicated delinquent may be placed in an institution in another party state pursuant to this compact, but no placement shall be made unless the child is given a court hearing, with an opportunity to be heard after notice to the parent or guardian, before the child is sent to the party state for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending state; and

(2) Institutional care in the receiving state is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact administrator.

The appropriate authority shall be the general coordinator of activities under this compact in his or her state and who, acting jointly with the appropriate authority of other party states, shall promulgate rules and regulations in accordance with the procedures established by subchapter I of Chapter 5 of Title 2.

ARTICLE VIII. Limitations.

This compact shall not apply if:

(1) A child is sent or brought into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian, or if the child is left with the relative or nonagency guardian in the receiving state.

(2) A child is placed, sent, or brought into a receiving state pursuant to any other interstate compact to which both the state from which the child is placed and the receiving state are parties, or to any other agreement between the sending and receiving states that has the force of law.

ARTICLE IX. Enactment and withdrawal.

This compact shall be open to joinder by any state, territory, or possession of the United States, the District, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any Canadian province. The compact shall be effective when the jurisdiction has enacted the compact into law. Withdrawal from this compact shall be by the enactment of a statute

that repeals the compact, but the repeal shall not take effect until 2 years after the effective date of the statute that repeals the compact and written notice of the withdrawal has been given by the withdrawing state to the executive head of each other party jurisdiction, Withdrawal of a party state shall not affect the rights, duties, or obligations under this compact of any sending state with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and severability.

The provisions of this compact shall be liberally construed to effectuate the purposes of the compact. If this compact is held to be contrary to the constitution of any party state, the compact shall remain in effect as to the remaining states and in effect as to the state affected as to all severable matters.

(Sept. 20, 1989, D.C. Law 8-30, § 2, 36 DCR 4744.)

Prior Codifications. — 1981 Ed., § 32-1042.

legislative history of D.C. Law 8-30, see Historical and Statutory Notes following § 4-1421.

Legislative history of Law 8-30. — For

CASE NOTES

Conditions for placement.

Interstate Compact on the Placement of Children (ICPC) precluded placement of child with child's maternal grandmother in Maryland following termination of parental rights of child's biological parents, where Maryland officials concluded, on basis of two separate home studies, that placement of child with maternal grandmother would not be in child's interest, and District of Columbia officials were not at liberty to re-examine evidence of grandmother's suitability. In re T.M.J., 878 A.2d 1200, 2005 D.C. App. LEXIS 381 (2005).

Before an interstate placement may be ordered, the Interstate Compact on the Placement of Children (ICPC) requires that the receiving state be given notice of the intended

placement, including the name and address of the person or agency with whom the proposed placement is to be made and a full statement of the reason for the proposed action and evidence of the authority for the proposed placement. In re T.M.J., 878 A.2d 1200, 2005 D.C. App. LEXIS 381 (2005).

Interstate Compact on the Placement of Children (ICPC) prohibits a state from sending a child or causing a child to be sent into another party state for placement in foster care or prior to a possible adoption, unless the sending state complies with each requirement set forth in this compact and applicable laws of the receiving state that govern the placement of children. In re T.M.J., 878 A.2d 1200, 2005 D.C. App. LEXIS 381 (2005).

§ 4-1423. Agreements with other states.

An officer of the District that has the authority to place children and an official of a private agency licensed as a child placement agency by the District government pursuant to subchapter I of this chapter, is authorized to enter into an agreement with the appropriate officer or agency in another party state pursuant to subsection (b) of Article V of the compact.

(Sept. 20, 1989, D.C. Law 8-30, § 4, 36 DCR 4744.)

Prior Codifications. — 1981 Ed., § 32-1043.

legislative history of D.C. Law 8-30, see Historical and Statutory Notes following § 4-1421.

Legislative history of Law 8-30. — For

§ 4-1424. Delinquent children, administrative hearing, judicial review.

(a) If a child is adjudicated delinquent and committed to the custody of the District of Columbia Department of Human Services ("DHS"), pursuant to § 16-2320, and DHS, pursuant to Article VI of the Interstate Compact on the Placement of Children ("Compact") places the child in another party jurisdiction, the rules issued pursuant to this section shall apply for purposes of meeting the requirements of Article VI of the compact.

(b) DHS shall afford an opportunity for an administrative hearing to the parents or legal guardian before placing a child. Subsequent to the hearing, the decision to make a placement upon request of the parent or guardian of the child may be reviewed at a court hearing in the Juvenile Branch of the Family Division of the Superior Court of the District of Columbia. The court hearing shall be held within 30 days after a request is made. The decision to place the child in an institution in another party state shall be upheld if the court finds that:

(1) Equivalent facilities for the child are not available within the jurisdiction of the District; and

(2) Institutional care in another state is in the best interest of the child and will not produce undue hardship.

(c) Except as provided in this section, the manner and standard of review by the Superior Court of the District of Columbia shall be as set forth in subchapter I of Chapter 5 of Title 2.

(d) A court review in accordance with this section shall not authorize the court to:

(1) Order DHS to pay for the care or treatment of a child who has not been committed to its custody;

(2) Order specific placement in another party state if the child has been committed to the custody of DHS;

(3) Review a decision by DHS to return a child to the District; or

(4) Set aside the placement decision of DHS, unless an abuse of discretion is found.

(e) This section shall not affect the authority of the court to order a specific placement.

(Sept. 20, 1989, D.C. Law 8-30, § 5, 36 DCR 4744.)

Prior Codifications. — 1981 Ed., § 32-1044.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 401 to 408 of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

Emergency legislation. — For temporary (90-day) addition of §§ 32-1061 to 32-1068 1981 Ed., see §§ 401 to 408 of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) addition of §§ 32-1061 to 32-1068 1981 Ed., see §§ 401 to 408 of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) addition of §§ 32-1061 to 32-1068 1981 Ed., see §§ 401 to 408 of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

Legislative history of Law 8-30. — For

legislative history of D.C. Law 8-30, see Historical and Statutory Notes following § 4-1421.

CHAPTER 14A. NEWBORN SAFE HAVEN.

Sec.

4-1451.01. Definitions.

4-1451.02. Surrender.

4-1451.03. Signage.

4-1451.04. Placement.

Sec.

4-1451.05. Parental rights.

4-1451.06. Immunity from liability.

4-1451.07. Status report.

4-1451.08. Rules.

§ 4-1451.01. Definitions.

For the purposes of this chapter, the term:

(1) “Authorized Receiving Facility” means a hospital, or other place authorized by the Mayor, by rule, to accept a newborn for surrender pursuant to this chapter.

(2) “CFSA” means the Child and Family Services Agency.

(3) “Newborn” means an infant whose parent refuses or is unable to assume the responsibility for the infant’s care, control, and subsistence and who is surrendered by that parent and who a licensed physician or other person authorized to accept the surrender reasonably believes is 14 days old or less.

(4) “Surrender” means to bring a newborn to an Authorized Receiving Facility during its hours of operation and to leave the newborn with personnel of the Authorized Receiving Facility.

(May 27, 2010, D.C. Law 18-158, § 101, 57 DCR 3000.)

Temporary Addition of Section. — Sections 2 of D.C. Law 18-29 added a section to read as follows:

“Sec. 2. Definitions.

“For the purposes of this act, the term:

“(1) ‘Authorized Receiving Facility’ means a hospital, or other place authorized by the Mayor, by rule, to accept a newborn for surrender pursuant to this act.

“(2) ‘CFSA’ means the Child and Family Services Agency.

“(3) ‘Newborn’ means an infant that a licensed physician or other person authorized to accept the surrender reasonably believes is 7 days old or less.

“(4) ‘Surrender’ means to bring a newborn to an Authorized Receiving Facility during its hours of operation, and to leave the newborn with personnel of the Authorized Receiving Facility.”

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 101 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — Law 18-158, the “Newborn Safe Haven Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-180, which was referred to the Committee on Human Services and the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Signed by the Mayor on March 25, 2010, it was assigned Act No. 18-349 and transmitted to both Houses of Congress for its review. D.C. Law 18-158 became effective on May 27, 2010.

§ 4-1451.02. Surrender.

(a) Except when there is actual or suspected child abuse or neglect, a custodial parent who is a resident of the District of Columbia may surrenders a newborn in accordance with this chapter and shall have the right to remain anonymous and to leave the place of surrender at any time and shall not be

pursued by any person at the time of surrender or prosecuted for the surrender of the newborn.

(b) To surrender a newborn in accordance with this chapter, and rules promulgated pursuant to this chapter, shall not, by itself, constitute a basis for a finding of abuse, neglect, or abandonment.

(c) The Authorized Receiving Facility personnel receiving the surrendered newborn shall make a reasonable effort to obtain family and medical history from the surrendering parent, including personal information such as both of the parents' identities, and shall provide to the surrendering parent information on adoption and counseling services.

(d) The Authorized Receiving Facility personnel receiving the surrender of a newborn shall file a written statement with the CFSA, on or before the time CFSA assumes physical custody of the newborn, that includes the:

- (1) Date of the surrender;
- (2) Time of the surrender;
- (3) Circumstances of the surrender; and
- (4) Personal information obtained, if any.

(May 27, 2010, D.C. Law 18-158, § 102, 57 DCR 3000.)

Temporary Addition of Section. — Sections 3 of D.C. Law 18-29 added a section to read as follows:

“Sec. 3. Surrendering.

“(a) Except when there is actual or suspected child abuse or neglect, a parent who surrenders a newborn shall have the right to remain anonymous and to leave the place of surrendering at any time and shall not be pursued by any person at the time of surrender or prosecuted for surrendering the newborn.

“(b) Surrendering a newborn in accordance with this act, and rules promulgated pursuant to this act, shall not, by itself, constitute a basis for a finding of abuse, neglect, or abandonment of a newborn.

“(c) The Authorized Receiving Facility personnel receiving the surrendered newborn shall make a reasonable effort to obtain family and medical history from the surrendering parent, on an anonymous basis, without seeking personal information, such as the identity or ad-

dress, and to provide to the surrendering parent information on adoption and counseling services.

“(d) The Authorized Receiving Facility personnel receiving the surrendered newborn shall file a written statement with the CFSA, on or before the time CFSA assumes physical custody of the newborn, that includes the date, time, and circumstances of the surrender.”

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 3 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 102 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

§ 4-1451.03. Signage.

The Mayor shall develop and post uniform signage with a toll-free number to call for further information in a conspicuous place on the exterior of each Authorized Receiving Facility that states in plain terms that a newborn may be surrendered at the facility in accordance with this chapter.

(May 27, 2010, D.C. Law 18-158, § 103, 57 DCR 3000.)

Temporary Addition of Section. — Sections 4 of D.C. Law 18-29 added a section to read as follows:

“Sec. 4. Signage.

“An Authorized Receiving Facility shall post a sign in a conspicuous place on the exterior of

the facility that states in plain terms that a newborn may be surrendered at the facility in accordance with this act.”

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 4 of Newborn Safe

Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 103 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

§ 4-1451.04. Placement.

(a) After the surrender of a newborn, an Authorized Receiving Facility that is not a hospital shall transport the newborn to the nearest hospital as soon as transportation can be arranged.

(b)(1) The act of surrender shall constitute implied consent for the hospital to which the newborn is surrendered or transported and the hospital’s medical personnel to treat and provide care for the newborn and arrange for further placement with CFSA and, through CFSA, with a preadoptive home whenever possible.

(2) Hospital personnel shall immediately contact CFSA to report the surrender of the newborn and arrange for transport of the newborn to CFSA. The CFSA shall assume physical custody of the newborn within 23 hours of the surrender.

(May 27, 2010, D.C. Law 18-158, § 104, 57 DCR 3000.)

Temporary Addition of Section. — Sections 5 of D.C. Law 18-29 added a section to read as follows:

“Sec. 5. Placement.

“(a) After the surrendering of a newborn, an Authorized Receiving Facility that is not a hospital shall transport the newborn to the nearest hospital as soon as transportation can be arranged.

“(b)(1) The act of surrendering shall constitute implied consent for the hospital to which the newborn is surrendered, or to which the newborn is transported, and the hospital’s medical personnel and physicians, to treat and provide care for the newborn and arrange for further placement with CFSA.

“(2) Hospital personnel shall immediately

contact CFSA to report the surrender of the newborn and arrange for transport of the newborn to CFSA, which shall take place within 23 hours.”

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 5 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 104 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

§ 4-1451.05. Parental rights.

(a) Notwithstanding § 4-1406(b) [(b) repealed], there shall be no 72-hour waiting period prior to relinquishment of parental rights under this chapter. A relinquishment of parental rights shall take place upon surrender. Upon CFSA’s receipt of the statement required by § 4-1451.02(d) and assuming physical custody, CFSA shall assume immediate care, custody, and control of the surrendered newborn.

(b) A relinquishment of parental rights under this chapter may be revoked and parental rights restored in accordance with § 4-1406(c) and (d); provided, that:

(1) The parent agrees to genetic testing to establish maternity or paternity;

(2) The genetic test establishes that the surrendering parent is the biological parent of the newborn; and

(3) A risk assessment is conducted to determine if a further investigation is necessary or that the family needs to be referred for support services and is so referred.

(c)(1) A relinquishment of parental rights and any revocation of the relinquishment shall be recorded and filed by CFSA in a properly sealed file in the Family Court of the Superior Court for the District of Columbia, along with a copy of the statement required by § 4-1451.02(d), within 20 days after the expiration of the 14-day revocation period in § 4-1406(c).

(2) The seal of the relinquishment file shall not be broken except for good cause shown and upon the written order of a judge.

(d)(1) No later than 90 days after surrender, CFSA shall attempt to identify, locate, and notify the non-surrendering parent by performing a missing-child search and publishing notice of the surrender of the newborn in accordance with paragraph (2) of this subsection.

(2) The notice required by paragraph (1) of this subsection shall, at a minimum, include:

(A) In regard to the surrender, the:

- (i) Place;
- (ii) Date; and
- (iii) Time;

(B) In regard to the newborn, the:

- (i) Sex;
- (ii) Race;
- (iii) Approximate age;
- (iv) Any identifying marks; and

(v) Any other identifying information CFSA considers necessary; and

(C) A statement that the non-surrendering parent's failure to notify CFSA, or other contact as set forth in the notice, of the intent to exercise his or her parental rights and responsibilities within 20 days of publication of this notice shall be deemed to be the non-surrendering parent's irrevocable consent to the termination of all parental rights and his or her irrevocable waiver of any right to notice of, or opportunity to participate in, any termination of parental rights proceeding involving the surrendered newborn.

(3) The court may grant a petition for adoption without consent following relinquishment of parental rights and the termination of parental rights pursuant to this section and § 16-304(g).

(May 27, 2010, D.C. Law 18-158, § 105, 57 DCR 3000; Sept. 24, 2010, D.C. Law 18-230, § 601, 57 DCR 6951.)

Effect of amendments. — D.C. Law 18-230, in subsec. (c)(1), substituted “14-day” for “10-day”.

Temporary Addition of Section. — Sec-

tions 6 of D.C. Law 18-29 added a section to read as follows:

“Sec. 6. Parental rights.

“(a) Notwithstanding section 6(b) of An Act To

regulate the placing of children in family homes, and for other purposes, approved April 22, 1944 (58 Stat. 193; D.C. Official Code § 4-1406(b)) ('placement act'), there shall be no 72-hour period prior to relinquishment under this act. A relinquishment of parental rights shall take place upon surrender. Upon CFSA's receipt of the statement required by section 3(d), CFSA shall take immediate care, custody, and control of the surrendered newborn.

"(b) A relinquishment of parental rights under this act may be revoked and parental rights restored in accordance with section 6(c) and (d) of the placement act.

"(c) Within 20 days after the expiration of the 10-day revocation period provided for in section 6(c) of the placement act, CFSA shall file a form acknowledging the surrender, along with a copy

of the statement required by section 3(d), with the Family Court of the Superior Court of the District of Columbia.

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 6 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 105 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

Legislative history of Law 18-230. — For Law 18-230, see notes following § 4-361.

§ 4-1451.06. Immunity from liability.

(a) An Authorized Receiving Facility and the personnel of an Authorized Receiving Facility shall be immune from civil or criminal liability for the good-faith performance of the reporting and placement responsibilities under this chapter, including liability for the failure to file a report that might otherwise be incurred or imposed on a person required to report suspected incidents of child abuse or neglect under § 4-1321.02.

(b) In any civil or criminal proceeding brought under this chapter concerning the surrender of a newborn, good faith shall be presumed unless rebutted.

(May 27, 2010, D.C. Law 18-158, § 106, 57 DCR 3000.)

Temporary Addition of Section. — Sections 7 of D.C. Law 18-29 added a section to read as follows:

"Sec. 7. Immunity from liability.

"(a) An Authorized Receiving Facility and the personnel of an Authorized Receiving Facility shall be immune from civil or criminal liability for the good faith performance of responsibilities under this act, including liability for the failure to file a report that might otherwise be incurred or imposed on a person required to report suspected incidents of child abuse or neglect under section 2 of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 5, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.02).

"(b) In any civil or criminal proceeding brought under this act concerning a surrendered newborn, good faith shall be presumed unless rebutted.

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 7 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 106 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

§ 4-1451.07. Status report.

The Mayor shall submit a status report by January 1, 2011, and on January 1 of each year thereafter, to the Council, which shall include the:

- (1) Number of newborns surrendered;
- (2) Services provided to surrendered newborns;
- (3) Outcome of the care provided for each surrendered newborn; and

(4) Number and disposition of cases of surrendered newborns.

(May 27, 2010, D.C. Law 18-158, § 107, 57 DCR 3000.)

Emergency legislation. — For temporary (90 day) addition, see § 107 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

§ 4-1451.08. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(May 27, 2010, D.C. Law 18-158, § 108, 57 DCR 3000.)

Temporary Addition of Section. — Sections 8 of D.C. Law 18-29 added a section to read as follows:

“Sec. 8. Rules.

“The Mayor shall issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.”

Section 10(b) of D.C. Law 18-29 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 8 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-49, April 27, 2009, 56 DCR 3581).

For temporary (90 day) addition, see § 108 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

Legislative history of Law 18-158. — For Law 18-158, see notes following § 4-1451.01.

CHAPTER 15. CRIMINAL BACKGROUND CHECKS FOR GOVERNMENT SERVICES TO CHILDREN.

Sec.	Sec.
4-1501.01. Short title.	subject to criminal background checks.
4-1501.02. Definitions.	
4-1501.03. Criminal background checks required for certain individuals.	4-1501.07. Assessment of information on covered child or youth services providers.
4-1501.04. Authorization to obtain records.	4-1501.08. Confidentiality of information to be maintained.
4-1501.05. Procedure for criminal background checks.	4-1501.09. Penalty for providing false information.
4-1501.05a. Assessment of information obtained from criminal background check.	4-1501.10. Penalties for disclosing confidential information.
4-1501.06. Submission of positions of covered child or youth services providers	4-1501.11. Rules.

§ 4-1501.01. Short title.

This chapter may be cited as the “Criminal Background Checks for the Protection of Children Act of 2004”.

(Apr. 13, 2005, D.C. Law 15-353, § 201, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 201, 205, 206, 209 to 212 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) additions, see §§ 201, 205, 206, 209 to 212 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) additions, see §§ 201, 205, 206, 209 to 211 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) additions, see §§ 201, 205, 206, 209 to 211 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003

(D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 201 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — Law 15-353, the “Child and Youth, Safety and Health Omnibus Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

Delegation of Authority. — Delegations of Authority under Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, as Amended, see Mayor’s Order 2007-95, April 18, 2007 (54 DCR 8875).

§ 4-1501.02. Definitions.

For the purposes of this chapter, the term:

(1) "Applicant" means an individual who has filed a written application for employment with a covered child or youth services provider or an individual who has made an affirmative effort through a written application or a verbal request to serve in an unsupervised volunteer position with a covered child or youth services provider.

(2) "Children" means individuals 12 years of age and under.

(3) "Covered child or youth services provider" means any District government agency providing direct services to children or youth and any private entity that contracts with the District to provide direct services to children or youth, or for the benefit of children or youth, that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. The term "covered child or youth services provider" does not include foster parents or grantees.

(4) "Criminal background check" means the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation and the Metropolitan Police Department.

(5) "Employee" means an individual who is employed on a full-time, part-time, temporary, or contractual basis by any covered child or youth services provider.

(6) "FBI" means the Federal Bureau of Investigation.

(7) "MPD" means the Metropolitan Police Department.

(8) "Supervised" means any person who is under the direct supervision, at all times, of an employee or a volunteer who has received a current, satisfactory criminal background check.

(9) "Volunteer" means an individual who works without any monetary or any other financial compensation for a covered child or youth services provider.

(10) "Youth" means an individual between 13 and 17 years of age, inclusive.

(Apr. 13, 2005, D.C. Law 15-353, § 202, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 202 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 202 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 202 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 202 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of

2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus

Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 202 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-2. — For Law 15-2, see notes following § 4-1501.01.

§ 4-1501.03. Criminal background checks required for certain individuals.

(a) Except as provided in subsections (b), (c), and (d) of this section, the following individuals shall apply for criminal background checks in accordance with the requirements of § 4-1501.05 and any regulations issued pursuant to § 4-1501.11:

(1) An applicant who is under consideration for paid employment by a covered child or youth services provider;

(2) An applicant who is under consideration for voluntary service in an unsupervised position by a covered child or youth services provider;

(3) An employee of a covered child or youth services provider; and

(4) A volunteer who serves a covered child or youth services provider in an unsupervised position.

(b) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will not bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check.

(c) A volunteer at a covered child or youth services provider who has only supervised contact with children or youth is not required to submit to a criminal background check, but may be required to submit to a traffic check pursuant to § 4-1501.04(b)(2).

(d) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check if the applicant, employee, or volunteer has an active federal security clearance.

(e) An applicant for a position at a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory background check, and may begin working in a supervised setting prior to receiving the results.

(f) A volunteer serving any covered child or youth services provider in a position that brings the volunteer in direct contact with children shall not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check have been received and determined to be satisfactory.

(g) An employee or unsupervised volunteer shall be required to submit to periodic criminal background checks while employed by or volunteering at any covered child or youth services provider in an unsupervised setting.

(Apr. 13, 2005, D.C. Law 15-353, § 203, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 203 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 203 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 203 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 203 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 203 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.04. Authorization to obtain records.

(a) The Mayor may obtain criminal history records maintained by the Federal Bureau of Investigation and the Metropolitan Police Department, and traffic records maintained by the Department of Motor Vehicles, to investigate a person applying for employment, in either a compensated position or an unsupervised volunteer position, with any covered child or youth services provider, and to investigate each current employee and unsupervised volunteer serving any covered child or youth services provider.

(b) Before any applicant for employment with any covered child or youth services provider may be offered a compensated position or an unsupervised volunteer position, the Mayor or the covered child or youth services provider shall inform the applicant that:

- (1) A criminal background check must be conducted on the applicant; and
- (2) In the case of an employee or volunteer who will be required to drive a motor vehicle to transport children in the course of performing his or her duties, a traffic record check must be conducted on the applicant.

(Apr. 13, 2005, D.C. Law 15-353, § 204, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 204 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 204 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003

(D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 204 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 204 of the Child and Youth, Safety and Health

Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 204 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.05. Procedure for criminal background checks.

(a) The Mayor or the appropriate personnel authority shall conduct criminal background checks, including the fingerprinting of applicants, employees, and volunteers of a District agency required by this section, in accordance with FBI policies and procedures and in an FBI-approved environment.

(b)(1) An applicant, employee, or volunteer required to apply for a criminal background check under § 4-1501.03 shall submit to a criminal background check by means of fingerprint and National Criminal Information Center checks conducted by the Mayor and the FBI.

(2) The fingerprints shall be available for use by the Mayor and the FBI to conduct a local and national criminal history record check of the applicant, employee, or volunteer.

(c) The Mayor or the appropriate personnel authority shall conduct a criminal background check once the applicant, employee, or volunteer has provided:

(1) A complete set of qualified, legible fingerprints on a fingerprint card, in a form approved by the FBI;

(2) Written authorization for the Mayor to conduct a criminal background check;

(3) Written confirmation that the applicant, employee, or volunteer has been informed by the Mayor of the covered child or youth services provider that the Mayor is authorized to conduct a criminal background check on the applicant, employee, or volunteer;

(4) Any additional identification that is required, including the name, social security number, birth date, and gender of the applicant, employee, or volunteer;

(5) A signed affirmation stating whether or not the applicant, employee, or volunteer has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intrafamily offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:

- (A) Murder, attempted murder, manslaughter, or arson;
- (B) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
- (C) Burglary;
- (D) Robbery;
- (E) Kidnapping;
- (F) Illegal use or possession of a firearm;
- (G) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
- (H) Child abuse or cruelty to children; or
- (I) Unlawful distribution of or possession with intent to distribute a controlled substance;

(6) Written acknowledgment that the Mayor or the covered child or youth services provider has notified the applicant, employee, or volunteer of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report; and

(7) Written acknowledgment that the Mayor or the covered child or youth services provider may choose to deny the applicant employment or a volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check.

(d) Fingerprinting for the purposes of this section may be conducted by any person authorized to do so by the Mayor or the FBI.

(e) A volunteer may use the same criminal background check for a period of 2 years when applying to volunteer for multiple positions, if the volunteer provides a signed affirmation that he or she has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in subsection (c)(5) of this section, or their equivalent in any other state or territory, since the date of the most recent criminal background check conducted on him or her.

(Apr. 13, 2005, D.C. Law 15-353, § 205, 52 DCR 2331; Apr. 24, 2007, D.C. Law 16-306, § 204(a), 53 DCR 8610.)

Effect of amendments. — D.C. Law 16-306 rewrote subsec. (c)(5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of (D.C. Law 16-65, March 8, 2006, law notification 53 DCR 2515).

Emergency legislation. — For temporary (90 day) addition, see § 205 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

For temporary (90 day) amendment of section, see § 2(a) of Criminal Background Checks for the Protection of Children Clarification Emergency Act of 2005 (D.C. Act 16-179, October 4, 2005, 52 DCR 9079).

For temporary (90 day) amendment of section, see § 2(a) of Criminal Background Checks for the Protection of Children Clarification Congressional Review Emergency Act of 2006 (D.C. Act 16-259, January 26, 2006, 53 DCR 777).

For temporary (90 day) amendment of sec-

tion, see § 204(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 204(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 204(a) of Omnibus Public Safety Congressional Review Emergency Amendment

Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 204(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

CASE NOTES

Ripeness.

Issues pertaining to District of Columbia Fire and Emergency Medical Services Department's (FEMS) implementation of criminal background check policy were not fit for judicial review, supporting determination that issues were not ripe for judicial review; policy had yet to be put into place, as District of Columbia had

changed its views with regard to how it applied to FEMS employees, and further factual development would have significantly advanced Court of Appeals' ability to deal with the legal issues presented. *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 2010 D.C. App. LEXIS 406 (2010).

§ 4-1501.05a. Assessment of information obtained from criminal background check.

(a) The information obtained from the criminal background check shall not create a disqualification or presumption against employment or volunteer status of the applicant unless the Mayor determines that the applicant poses a present danger to children or youth. In making this determination, the Mayor shall consider the following factors:

(1) The specific duties and responsibilities necessarily related to the employment sought;

(2) The bearing, if any, the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;

(3) The time which has elapsed since the occurrence of the criminal offense;

(4) The age of the person at the time of the occurrence of the criminal offense;

(5) The frequency and seriousness of the criminal offense;

(6) Any information produced by the person, or produced on his or her behalf, regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense; and

(7) The public policy that it is beneficial generally for ex-offenders to obtain employment.

(b) The Mayor and covered child or youth services providers shall not employ or permit to serve as an unsupervised volunteer an applicant who has been convicted of, has pleaded nolo contendere to, is on probation before judgment or placement of a case on the stet docket because of, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

(c) If an application is denied because the applicant presents a present danger to children or youth, the Mayor shall inform the applicant in writing

and the applicant may appeal the denial to the Commission on Human Rights within 30 days of the date of the written statement.

(Apr. 13, 2005, D.C. Law 15-353, § 205a, as added Apr. 24, 2007, D.C. Law 16-306, § 204(b), 53 DCR 8610.)

Emergency legislation. — For temporary (90 day) addition, see § 204(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) addition, see § 204(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) addition, see § 204(b)

of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) addition, see § 204(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 16-306. — For Law 16-306, see notes following § 4-1305.01.

§ 4-1501.06. Submission of positions of covered child or youth services providers subject to criminal background checks.

(a) Within 30 days of December 1, 2004, each District government agency shall submit to the Mayor the positions it has designated as subject to the criminal background check requirements of this chapter, including those of private entities that contract with the District to provide direct services to children or youth and that are under the contractual purview of the agency.

(b) Each District government agency shall submit an updated list of the positions subject to the criminal background check requirements of this chapter no later than December 1 of each year.

(Apr. 13, 2005, D.C. Law 15-353, § 206, 52 DCR 2331.)

Emergency legislation. — For temporary (90 day) addition, see § 206 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.07. Assessment of information on covered child or youth services providers.

The Mayor shall review the information on all proposed covered child or youth services providers submitted pursuant to § 4-1501.06, and any other available information, to make a decision regarding the applicability of this chapter to each child or youth services provider.

(Apr. 13, 2005, D.C. Law 15-353, § 207, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(b) of (D.C. Law 16-65, March 8, 2006, law notification 53 DCR 2515).

Emergency legislation. — For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Congressional Re-

view Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

For temporary (90 day) addition, see § 2(b) of Criminal Background Checks for the Protection of Children Clarification Emergency Act of 2005 (D.C. Act 16-179, October 4, 2005, 52 DCR 9079).

For temporary (90 day) addition, see § 2(b) of Criminal Background Checks for the Protection of Children Clarification Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-259, January 26, 2006, 53 DCR 777).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.08. Confidentiality of information to be maintained.

All criminal background records received by the Mayor shall be confidential and are for the exclusive use of making employment-related determinations under this chapter. The records shall not be released or otherwise disclosed to any person except when:

- (1) Required as one component of an application for employment with any covered child or youth services provider under this chapter;
- (2) Requested by the Mayor, or his or her designee, during an official inspection or investigation;
- (3) Ordered by a court;
- (4) Authorized by the written consent of the person being investigated; or
- (5) Utilized for a corrective, adverse, or administrative action in a personnel proceeding.

(Apr. 13, 2005, D.C. Law 15-353, § 208, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 207 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 207 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 207 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 207 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 207 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.09. Penalty for providing false information.

An applicant for employment or a volunteer position with any covered child or youth services provider who intentionally provides false information that is

material to the application in the course of applying for the position shall be subject to prosecution pursuant to § 22-2405.

(Apr. 13, 2005, D.C. Law 15-353, § 209, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 213 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 213 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 213 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 213 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 213 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 213 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 213 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 213 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 212 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 209 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.10. Penalties for disclosing confidential information.

(a) An individual who discloses confidential information in violation of § 4-1501.08 is guilty of a criminal offense and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

(b) Prosecutions for violations of this chapter shall be brought in the Superior Court of the District of Columbia by the Office of the Attorney General.

(Apr. 13, 2005, D.C. Law 15-353, § 210, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 214 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 214 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 214 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004

(D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 214 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 214 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 214 of Child and Youth, Safety and Health Omnibus

Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 214 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 214 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 213 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 210 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

§ 4-1501.11. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter. The rules shall include:

(1) Notice that applicants for employment with, and employees and unsupervised volunteers of, clearly identified covered child or youth services providers are required to apply for criminal background checks within 45 days from the date of publication of the rules;

(2) The location of the office in which applications for criminal background checks are to be made;

(3) Standards for determining which District agencies and private entities are considered to be covered child or youth services providers that are required to comply with the requirements of this chapter;

(4) Procedures for covered child or youth services providers to challenge the determination that they are required to comply with this chapter;

(5) Procedures for an applicant or employee to challenge allegations that the applicant or employee committed a proscribed offense; and

(6) A description of the corrective or adverse actions that may be taken against any covered child or youth services provider that, or any employee of a covered child or youth services provider who, is found to have violated the provisions of this chapter.

(Apr. 13, 2005, D.C. Law 15-353, § 211, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 208 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 208 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 208 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 208 of the Child and Youth, Safety and Health

Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 208 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 211 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 4-1501.01.

Delegation of Authority. — Delegation of Authority Under Title II of D.C. Act 15-630, the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 and any Similar Succeeding Legislation, see Mayor's Order 2005-33, February 22, 2005 (52 DCR 2854).

Delegation of Authority Under Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, see Mayor's Order 2005-73, May 5, 2005 (52 DCR 5501).

CHAPTER 16. ACCESS TO JUSTICE INITIATIVE. [REPEALED].

Sec.
4-1601. [Repealed].

§ 4-1601. Definitions. [Repealed].

Repealed.

(Sept. 24, 2010, D.C. Law 18-223, § 3012, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 3002(a), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3012 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to

both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-204.07.

Short title. — Short title: Section 3011 of D.C. Law 18-223 provided that subtitle B of title III of the act may be cited as the “Access to Justice Initiative Establishment Act of 2010”.

Short title: Section 3001 of D.C. Law 19-21 provided that subtitle A of title III of the act may be cited as “Access to Justice Initiative Amendment Act of 2011”.

CHAPTER 17. ACCESS TO JUSTICE INITIATIVE PROGRAM.

Subchapter I. Definitions

PART C

Sec.

4-1701.01. Definitions.

Poverty Lawyer Loan Repayment Assistance Program.

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PART A

Access to Justice Initiative

4-1702.01. Access to Justice Initiative.

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PART B

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4-1704.01. LRAP.

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4-1704.03. LRAP; participation eligibility.

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4-1704.05. LRAP; participant obligations.

4-1704.06. LRAP; disbursement of loans.

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*Subchapter I. Definitions.***§ 4-1701.01. Definitions.**

For the purposes of this chapter, the term:

(1) “Adequate notice” means written notice of termination from eligible employment provided within 15 days of termination and separate written confirmation by the provider of eligible employment.

(2) “Adjusted gross income” shall have the same meaning as provided in § 47-1803.02(b).

(3) “Administrator” means the entity designated to administer the LRAP, established pursuant to § 4-1704.01.

(4) “Applicant” means an individual who applies for assistance from the LRAP.

(5) “ATJ” means the Access to Justice Grant Funding for Civil Legal Services.

(6) “Bar Foundation” means the District of Columbia Bar Foundation.

(7) “Deputy Mayor” means the Deputy Mayor for Public Safety and Justice or the Office of the Deputy Mayor for Public Safety and Justice, as the context requires.

(8) “Eligible debt” means outstanding principal, interest, and related expenses from loans obtained for reasonable educational expenses associated with obtaining a law degree made by government and commercial lending institutions or educational institutions, but does not include loans extended by a private individual or group of individuals, including families.

(9) “Eligible employment” means those areas of legal practice certified by the Administrator to serve the public interest, including employment with legal organizations that qualify for District of Columbia Bar Foundation funding, but does not include employment with the District of Columbia government or federal government or with or as the Administrator.

(10) “Full-time employment” means not less than 35 hours of work per week.

(11) “Initiative” means the Access to Justice Initiative established pursuant to § 4-1702.01.

(12) “Involuntary termination” means termination for budgetary or inadequate funding reasons, as confirmed, in writing, by the eligible employer.

(13) “Lawyer” means a graduate of an accredited law school who is:

(A) Licensed to practice in the District of Columbia;

(B) Authorized under the provisions of Rule 49(c)(9) of the District of Columbia Court of Appeals to practice law before that court; or

(C) A member in good standing of the highest court of any state who has submitted an application for admission to the District of Columbia Bar.

(14) “LRAP” means the District of Columbia Poverty Lawyer Loan Repayment Assistance Program.

(15) “Participant” means an eligible lawyer whose application to the LRAP has been approved.

(16) “Reasonable educational expenses” means the cost of tuition for law school as well as the costs of education considered to be required by the school’s degree program, such as fees for housing, transportation and commuting costs, books, supplies, and educational equipment and materials that are part of the estimated student budget of the school in which the participant was enrolled.

(17) “Service obligation” means the period of eligible employment necessary to sustain participation in the LRAP, which shall not be less than 45 weeks within the 12-month period for which the participant applied for assistance.

(Sept. 24, 2010, D.C. Law 18-223, § 101, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Subchapter II. Establishment of Program.

PART A.

ACCESS TO JUSTICE INITIATIVE.

§ 4-1702.01. Access to Justice Initiative.

The Office of the Deputy Mayor for Public Safety and Justice shall establish an Access to Justice Initiative program for the purpose of providing support to nonprofit organizations that deliver civil legal services to low-income and under-served District residents and providing loan-repayment assistance to lawyers working in eligible employment. The Initiative shall consist of the ATJ and LRAP programs.

(Sept. 24, 2010, D.C. Law 18-223, § 201, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1702.02. Financial audit and reporting requirements.

(a)(1) The Bar Foundation shall provide the Deputy Mayor with:

(A)(i) An annual financial audit of the ATJ program prepared by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards. The audit may be conducted as part of the Bar Foundation's annual audit.

(ii) The Bar Foundation may use a portion of funds allocated for reasonable administrative expenses pursuant to § 4-1703.01(b) to procure an audit of the ATJ program for the current or preceding fiscal year. The audit shall account for and reflect all interest associated with the grant funding. The audit may be conducted as part of the administrator's annual audit.

(B) Twice-yearly programmatic reporting on the administration and performance of the ATJ program.

(2) The Bar Foundation shall not be required to provide access to information on subgrantee matters covered by attorney-client privilege or attorney work-product privilege or that includes confidences and secrets of clients assisted by civil legal-service providers that receive funds through the ATJ program.

(b)(1)(A) The Administrator for the LRAP shall provide to the Deputy Mayor (or if the Deputy Mayor is acting as Administrator, the Deputy Mayor shall obtain) an annual financial audit of the LRAP prepared by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards.

(B) The Administrator may use a portion of funds allocated for reasonable administrative expenses pursuant to § 4-1704.01(c)(3) to procure an audit of the LRAP for the current or preceding fiscal year. The audit shall account for and reflect all interest associated with the grant funding.

(2) The Administrator shall provide semiannual programmatic reporting on the administration and performance of the LRAP.

(3) The Administrator shall not be required to provide (or if the Deputy is acting as Administrator, shall not release) information on subgrantee matters covered by attorney-client privilege or attorney work-product privilege or any information that includes confidences and secrets of clients assisted by lawyers participating in the LRAP.

(Sept. 24, 2010, D.C. Law 18-223, § 202, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

PART B.

FUNDING FOR PROGRAM.

§ 4-1703.01. ATJ; funding and administration.

(a) The Deputy Mayor shall award a grant each fiscal year from the budget of the Initiative to the Bar Foundation for the purpose of the Bar Foundation providing support to nonprofit organizations that deliver civil legal services to low-income and under-served District residents, including funds for a shared legal interpreter bank. Payment of the award shall be submitted by October 15th of each fiscal year in the amount specified in an act of the Council. The grant shall equal the budget for ATJ.

(b) The Deputy Mayor shall permit the Bar Foundation to use up to 5% of the grant awarded in each fiscal year for reasonable administrative expenses, including audits, associated with the provision of support to the nonprofit organizations.

(Sept. 24, 2010, D.C. Law 18-223, § 301, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

PART C.

POVERTY LAWYER LOAN REPAYMENT ASSISTANCE PROGRAM.

§ 4-1704.01. LRAP.

(a) The District of Columbia Poverty Lawyer Loan Repayment Assistance Program shall provide loan repayment assistance to lawyers working in eligible employment. The LRAP shall be part of and be funded through the Initiative, established pursuant to § 4-1702.01.

(b)(1) Funding for the LRAP shall be allocated to the Deputy Mayor.

(2) The amount of funding for the LRAP for each fiscal year shall be specified by an act of the Council and shall not be modified except by a subsequent act of the Council.

(c)(1) The Deputy Mayor may serve as Administrator or may designate a nonprofit entity to serve as the Administrator. If the Deputy Mayor designates a nonprofit entity as the Administrator, the Deputy Mayor shall provide funding for the LRAP by awarding a grant to the nonprofit entity. The grant shall be nonlapsing and interest earned by the nonprofit on grant funds shall remain available for use by the Administrator for the purposes of the LRAP, without fiscal year limitation, subject to authorization by Congress.

(2) For fiscal year 2012, the Deputy Mayor shall designate the Bar Foundation as the Administrator.

(3) The Administrator may use up to 15% of the grant funding for reasonable administrative expenses associated with administering the LRAP.

(Sept. 24, 2010, D.C. Law 18-223, § 401, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.02. LRAP; administration.

(a) The Administrator shall:

- (1) Establish an application and eligibility review process for the LRAP;
- (2) Conduct a semiannual review of the continued eligibility of participants;
- (3) Certify a list of eligible employment; and
- (4) Determine the levels of participant contribution.

(b) The Administrator shall provide loans to participants who maintain eligible employment to repay eligible debt for reasonable education expenses associated with obtaining a law degree. The Administrator shall forgive these loans upon a participant's completion of the required service obligation.

(Sept. 24, 2010, D.C. Law 18-223, § 402, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.03. LRAP; participation eligibility.

(a) To be eligible to participate in the LRAP, an applicant shall, at the time of application and throughout participation in the LRAP:

- (1) Hold, or actively plan to secure, eligible employment; provided, that a participant shall hold eligible employment before any payments may be disbursed;
- (2) Be a resident of the District of Columbia;
- (3) Be a lawyer;
- (4) Have an annual adjusted gross income of less than \$65,000;
- (5) Exhaust all other available avenues for loan repayment assistance, including through participation in any available undergraduate or law school debt-forgiveness programs;
- (6) Have no current service obligation from scholarships;
- (7) Submit a timely and completed application;
- (8) Be in satisfactory repayment status on all eligible debt; and
- (9) Execute a release to allow the Administrator access to records, credit information, and information from lenders necessary to verify eligibility of debt and to determine loan repayments.

(b) A law student attending the David A. Clarke School of Law at the University of the District of Columbia who is in his or her final year of school

may apply and be approved for loan repayment assistance if the applicant demonstrates that he or she will meet all eligibility requirements by the time of the first award disbursement.

(Sept. 24, 2010, D.C. Law 18-223, § 403, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.04. LRAP; award of loans.

(a) The Administrator shall award loans to participants during the period of service obligation in accordance with § 4-1704.06. Subject to the availability of funds and within the limits established by subsection (c) of this section, participants shall be granted loans sufficient to repay all eligible debt.

(b) If the needs of all participants exceed the financing available in any fiscal year, preference shall be given to participants who:

(1) Are graduates of accredited public schools of law in the District of Columbia;

(2) Have completed no less than 2 prior service obligations in the LRAP;

(3) Have graduated from an accredited school of law within the last 3 years; or

(4) Have a high debt to adjusted gross income ratio as compared to other participants.

(c) Participants in the LRAP shall not receive loan repayment assistance under the LRAP in excess of \$60,000, or in excess of \$1,000 for a single month; except, that the Deputy Mayor may by rulemaking increase the award limits in this subsection to reflect changes in reasonable education expenses.

(Sept. 24, 2010, D.C. Law 18-223, § 404, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.05. LRAP; participant obligations.

(a) A participant shall:

(1) Maintain full-time employment and eligible employment for each year of the service obligation;

(2) Sign a promissory note setting forth his or her obligation to the LRAP to repay any assistance loans that are not subsequently forgiven pursuant to § 4-1704.02(b) because of a failure to sustain eligible employment or other noncompliance with the eligibility requirements set forth in § 4-1704.03.

(3) Authorize the Administrator to verify his or her eligible employment and annual adjusted gross income at least semiannually during participation in the LRAP;

(4) Timely notify the Administrator of any change in status that would make the participant ineligible for an award; and

(5) Be responsible for:

(A) Negotiating with each lending institution the terms and conditions of eligible debt repayments; and

(B) Any penalties associated with early repayment.

(b) Except as provided in subsection (c) of this section, participants who fail to fulfill the required service obligation shall repay any loan disbursed, in accordance with the terms of the promissory note required by subsection (a)(2) of this section and regulations promulgated pursuant to § 4-1704.07.

(c) For the purposes of this chapter, a participant who provides adequate notice to the Administrator of involuntary termination from eligible employment shall be forgiven for the loan through the date of the involuntary termination from eligible employment. The participant shall be required to repay the loan from the date of involuntary termination from eligible employment through the end of the calendar year.

(Sept. 24, 2010, D.C. Law 18-223, § 405, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.06. LRAP; disbursement of loans.

(a) The Administrator shall begin to disburse loan repayment assistance within 90 days of the Administrator's receipt of adequate funds.

(b) Subject to the availability of appropriations, loan repayment-assistance payments shall be made not less than semiannually to the participant until the repayment of the eligible debt is complete or the participant no longer meets the eligibility requirements set forth in § 4-1704.03.

(Sept. 24, 2010, D.C. Law 18-223, § 406, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 4-1704.07. LRAP; rulemaking.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.

(Sept. 24, 2010, D.C. Law 18-223, § 407, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

TITLE 5. POLICE, FIREFIGHTERS, MEDICAL EXAMINER, AND FORENSIC SCIENCES.

Chapter

1. Metropolitan Police.
2. United States Park Police.
3. Federal Law Enforcement Officer Cooperation With Metropolitan Police Department.
- 3A. First Amendment Rights and Police Standards.
4. Fire and Emergency Medical Services Department.
5. Salaries.
6. Police and Firefighters Medical Care Recovery.
- 6A. Police and Firefighters Limited Duty.
7. Police and Firefighters Retirement and Disability.
8. Police Retirement While Under Disciplinary Investigation.
9. Awards for Meritorious Service.
10. Trial Boards.
- 10A. Police and Firefighters Disciplinary Action Procedures.
11. Review of Citizen Complaints Involving Police.
12. Registration of State Officials Entering District.
13. Miscellaneous Provisions.
14. Chief Medical Examiner.
15. Department of Forensic Sciences.

CHAPTER 1. METROPOLITAN POLICE.

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- 5-101.02. Boundaries and subdivision of Police District.
- 5-101.03. General duties of Mayor.
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Subchapter III. Personnel

- 5-105.01. Appointments; assignments; promotions; applicable civil service provisions; vacancies.
- 5-105.02. [Repealed].
- 5-105.03. Oath of office.
- 5-105.04. Probation period.
- 5-105.05. Composition of force; duties of positions.
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- 5-107.04. Duties of the Board; standards for applicants; continuing education program.

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- 5-109.01. Cadet program authorized; purpose; preference for appointment; appropriations.

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5-119.07. Acquittal of accused.

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METROPOLITAN POLICE

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- 5-119.16. Property delivered to owner preceding trial — Large quantities of goods held for sale.
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- 5-121.02. Duty in making arrest.
- 5-121.03. Acting without compliance with law.
- 5-121.04. Applicable police provisions.
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- 5-131.01. Authorization; detail of local officers; employment and compensation of Director.
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- 5-131.03. Retirement of Director — Conditions; annuities.
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- 5-132.02. Establishment of the Metropolitan Police Department School Safety Division; functions of the School Safety Division.
- 5-132.03. Training for school security personnel.
- 5-132.04. Comprehensive plan on school security; Memorandum of Agreement.
- 5-132.05. Authority to issue RFP's for school security related contracts.
- 5-132.06. Applicability of §§ 5-132.02 and 5-132.03.

Subchapter XVI-B. Establishment of Safe Passage Zones Near Schools

- 5-132.21. School safe passage emergency zones.

Subchapter XVII. Miscellaneous

- 5-133.01. [Reserved].
- 5-133.02. Allowance for use of private motor vehicles by inspectors.
- 5-133.03. Detail of privates.
- 5-133.04. [Repealed].
- 5-133.04a. Watchmen at Municipal Building.
- 5-133.05. Public buildings and grounds belonging to the United States.
- 5-133.06. Trial boards.
- 5-133.07. [Repealed].

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- 5-133.20. [Repealed].
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Subchapter I. Police Districts; Police Services Areas.

§ 5-101.01. Police District created.

The District is constituted a police district, to be called "The Metropolitan Police District of the District of Columbia."

(R.S., D.C., § 321.)

Cross references. — Demonstrations, marches, and assemblies relating to federal government, reimbursement of costs incurred by District, see § 1-207.37.

District of Columbia, territorial area, see §§ 1-101, 1-207.17.

Metropolitan Police, assistance to Secret Service, see § 1-207.31.

Prior Codifications. — 1981 Ed., § 4-101. 1973 Ed., § 4-101.

Editor's notes. — Council Police Misconduct and Personnel Management Special Com-

mittee Creation Emergency Resolution of 1997: Pursuant to Resolution 12-344, effective December 16, 1997, the Council approved the creation of a special committee for the Council of Police Misconduct and Personnel Management.

Special Committee on Police Misconduct and Personnel Management Extension Resolution of 1998: Pursuant to Resolution 12-690, effective September 22, 1998, the Council approved an extension for the Special Committee on Police Misconduct and Personnel Management.

CASE NOTES

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Liability of district.

Civil rights law.

Civil rights statute does not apply to officers of the District of Columbia. 42 U.S.C. § 1983. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Fact that civil rights statute does not provide basis for suits against municipalities did not preclude District of Columbia from being held liable, under doctrine of respondeat superior, for any false arrest and denial of civil rights by chief of metropolitan police department as al-

leged in a Bivens action. 42 U.S.C. § 1983. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Federal law.

The Federal Employees' Compensation Act refers only to federal employees and does not cover employees of District of Columbia, 5 U.S.C. §§ 757, 757 note. *Wham v. U.S.*, 180 F.2d 38, 1950 U.S. App. LEXIS 2361 (C.A.D.C. 1950).

In general.

Metropolitan police department was not suable as separate entity absent statutory provision for it to sue or be sued. D.C. Code 1981, § 4-101 et seq. *Hinton v. Metropolitan Police*

Dept., Fifth Dist., 726 F. Supp. 875, 1989 U.S. Dist. LEXIS 15302 (1989).

A member of metropolitan police in District of Columbia is not an employee of the United States, but is an employee of the municipal corporation, the District of Columbia. *Wham v. U.S.*, 81 F.Supp. 126, 1948 U.S. Dist. LEXIS 1835 (D.D.C.1948).

Liability of district.

Evidence that metropolitan police department of District of Columbia is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrated that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the chief had become, at the time of the arrests, a borrowed servant of the United States. D.C. Code § 9-126. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

There is no inconsistency between Federal Tort Claims Act and doctrine of respondeat superior which would exclude imposition of liability on the District of Columbia for any false arrest and violation of First Amendment rights perpetrated by chief of metropolitan police department. 18 U.S.C. § 2680(h); U.S. Const. Amend. 1. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

District of Columbia has no sovereign immunity from liability for nondiscretionary acts of its employees. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

District of Columbia, under common-law theory of respondeat superior, was liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of religious group who were conducting peaceful prayer vigil near White House. *Tatum v. Morton*, 402 F. Supp. 719, 1974 U.S. Dist. LEXIS 9547 (1974).

§ 5-101.02. Boundaries and subdivision of Police District.

The Metropolitan Police District of the District of Columbia shall be coextensive with the District of Columbia, and shall be subdivided into such police districts and precincts as the Council of the District of Columbia may from time to time direct.

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056.)

Cross references. — District of Columbia, territorial area, see §§ 1-101, 1-207.17.

Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-103. 1973 Ed., § 4-102.

Editor's notes. — Prior to Home Rule, the District of Columbia Council, via section 7.9 of Regulation No. 72-2, approved January 14, 1972, 18 DCR 417, delegated the authority to change the geographical boundaries of the police patrol districts to the Chief of Police.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(89) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-101.03. General duties of Mayor.

It shall be the duty of the Mayor of the District of Columbia at all times of the day and night within the boundaries of said Police District:

- (1) To preserve the public peace;
- (2) To prevent crime and arrest offenders;
- (3) To protect the rights of persons and of property;
- (4) To guard the public health;
- (5) To preserve order at every public election;
- (6) To remove nuisances existing in the public streets, roads, alleys, highways, and other places;
- (7) To provide a proper police force at every fire, in order that thereby the firemen and property may be protected;
- (8) To protect strangers and travelers at steamboat and ship landings and railway stations;
- (9) To see that all laws relating to the observance of Sunday, and regarding pawnbrokers, mock auctions, elections, gambling, intemperance, lottery dealers, vagrants, disorderly persons, and the public health, are promptly enforced; and
- (10) To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title. The police shall, as far as practicable, aid in the enforcement of garbage regulations.

(R.S., D.C., § 335; June 11, 1878, 20 Stat. 107, ch. 180, § 6; July 14, 1892, 27 Stat. 160, ch. 171.)

Cross references. — Alleys, subdivisions, regulation and jurisdiction over, see § 1-1323.

Arrests, warrantless, power and authority of police, see § 23-581.

Capitol grounds, policing, see § 10-503.19.

Mayor, police power of, see §§ 1-303.01 and 1-303.05.

Mentally ill, detention, see § 21-521 et seq.

Prior Codifications. — 1981 Ed., § 4-115. 1973 Ed., § 4-119.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Immunity.
In general.

Immunity.

Under District of Columbia common-law principles, a distinction is made between dis-

cretionary and ministerial acts of public officials, and immunity is provided in cases involving the former. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

The test for determining whether a given governmental function of the District of Columbia is discretionary and therefore one to which

immunity from suit ought to be applied is whether that function is of such a nature as to pose threats to the quality and efficiency of government in the District if liability in tort was made the consequence of negligent act or omission. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Although under District of Columbia common-law principles a distinction is made between discretionary and ministerial acts of public officials and immunity is provided in cases involving the former, the common-law immunity is not available in cases arising under the Civil Rights Act or cases arising under the Constitution itself. 18 U.S.C. § 1331(a); 42 U.S.C. § 1983. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Although municipalities are immune from suit under Civil Rights Act of 1871, that immunity stems from the unique legislative history of the Act. 42 U.S.C. § 1983. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

In general.

Municipalities, including the District of Columbia, can be held liable in actions for deprivation of constitutional rights where such actions are brought directly under the Constitution, rather than under Civil Rights Act of 1871. 18 U.S.C. § 1331(a); 42 U.S.C. § 1983. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

§ 5-101.04. Police Services Areas.

(a) By January 1, 2001, the Chief of the Metropolitan Police Department ("MPD") shall submit to the Council a study performed by MPD on the efficacy of the Police Service Area ("PSA") model, including:

- (1) Whether re-engineering of the model is necessary;
- (2) Whether PSA boundaries need to be redrawn; and
- (3) Whether PSA staffing is appropriate.

(b) By April 1, 2001, the Chief of MPD shall submit a plan to the Council for redeploying sworn officers into the PSA system. Pursuant to this redeployment plan, a minimum of 60% of all sworn officers who are available for full duty would be assigned to the PSA system. For this purpose, these officers would be assigned to street patrol and available to respond to calls for service.

(c) The requirement set forth in subsection (b) of this section does not preclude the Chief of Police from also submitting alternatives to the redeployment plan required by the Council.

(d)(1) Until MPD attains 3,700 sworn officers, the Chief of the MPD shall deploy sworn officers as necessary to ensure that a minimum of 62% of all sworn police personnel are assigned to direct service delivery in the PSAs. Sworn officers assigned to PSAs shall not be deployed outside of their respective PSAs at any time, unless responding to an emergency situation.

(2) For the purposes of this subsection, the term:

(A) "Sworn police personnel" is limited to all of the sworn lieutenants, sergeants, and officers.

(B) "Emergency situation" means any extraordinary occurrence in the District of Columbia which requires the use of sworn police personnel to protect the health and safety of residents and visitors, including civil disorder, riots, acts of terrorism, or natural disasters."

(e) The deployment of sworn officers to the PSAs shall be based on the following considerations:

- (1) The number of Part 1 offenses;
- (2) Drug activities;
- (3) The number of arrests;
- (4) The need for traffic enforcement; and

(5) The number of calls for service.

(f) Until MPD attains 3,800 sworn officers, all newly sworn officers who were recruited by MPD to become police officers shall be assigned to neighborhood patrols in the PSAs.

(Oct. 19, 2000, D.C. Law 13-172, § 842, 47 DCR 6308; Nov. 13, 2003, D.C. Law 15-39, § 3002, 50 DCR 5668; Apr. 13, 2005, D.C. Law 15-354, § 97, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-39 added subsecs. (d), (e), and (f).

D.C. Law 15-354 substituted “Police Services Area” for “Patrol Services Area”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of PSA Restructuring Council Review Temporary Act of 2003 (D.C. Law 15-79, March 10, 2004, law notification 51 DCR 3371).

Emergency legislation. — For temporary (90 day) amendment of section, see § 842 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of the Public Safety Crisis Emergency Amendment Act of 2003 (D.C. Act 15-26, February 24, 2003, 50 DCR 2148).

For temporary (90 day) amendment of section, see § 2902 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 2 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) prohibition of implementation of Metropolitan Police Department’s Police Service Areas restructuring plan prior to Council review, see § 2 of PSA Restructuring Council Review Emergency Act of 2003 (D.C. Act 15-206, October 24, 2003, 50 DCR 9850).

For temporary (90 day) prohibition of implementation of Metropolitan Police Department’s Police Service Areas restructuring plan prior to Council review, see § 2 of PSA Restructuring Council Review Congressional Review Emergency Act of 2004 (D.C. Act 15-337, January 29, 2004, 51 DCR 1813).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support

Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003,” was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004,” was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Short title. — Short title of title XXX of Law 15-39: Section 3001 of D.C. Law 15-39 provided that title XXX of the act may be cited as the Neighborhood Safety Amendment Act of 2003.

Editor’s notes. — Applicability: Section 3003 of D.C. Law 15-39 provided: “This title shall apply as of October 1, 2003. The delayed applicability of the title shall not be construed as prohibiting the Chief of the Metropolitan Police Department from implementing the changes mandated by the title prior to October 1, 2003.”

Subchapter II. Police Code.

§ 5-103.01. Publication authorized.

The Mayor of the District of Columbia is authorized, from time to time, without expense to the United States, to cause to be collected into compact

form all the laws and ordinances in force in the District having relation and applicable to police and health, and to publish the same in a form easily accessible to all members of the community as the Police Code of the District.

(R.S., D.C., § 437; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Municipal ordinances and regulations, *proof*, see § 14-505.

Protection of life, health, and property, rules and regulations, see § 1-303.03.

Section references. — This section is referred to in § 5-103.02.

Prior Codifications. — 1981 Ed., § 4-177. 1973 Ed., § 4-177.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-103.02. Legal effect.

The Police Code, prepared in accordance with § 5-103.01 and such rules as the Mayor of the District of Columbia may from time to time adopt for the purpose of enforcing and carrying out the provisions thereof, shall constitute the law of the District upon the matters therein contained.

(R.S., D.C., § 438.)

Prior Codifications. — 1981 Ed., § 4-178. 1973 Ed., § 4-178.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter III. Personnel.

§ 5-105.01. Appointments; assignments; promotions; applicable civil service provisions; vacancies.

(a) The Mayor of said District shall appoint to office, assign to such duty or duties as he may prescribe, and promote all officers and members of said Metropolitan Police force; provided, that all officers, members, and civilian employees of the force except the Chief of Police, the Assistant and Deputy Chiefs of Police, and the inspectors, shall be appointed and promoted in accordance with the provisions of §§ 1101— 1103, 1105, 1301— 1303, 1307,

1308, 2102, 2951, 3302— 3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States; provided further, that the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines: Provided further, that privates of class 1, if found efficient, shall serve 1 year on probation, privates of class 2 shall serve 2 years subsequent to service in class 1, and privates of class 3 shall include all those privates who have served efficiently 3 or more years. In order that the full complement of the Metropolitan Police force may at all times be maintained, as authorized by law, the Mayor of the District of Columbia is authorized, when vacancies occur in classes 2 and 3 of said Metropolitan Police force, which cannot be filled by promotion, to appoint privates in class 1 equal in number to the positions vacated in said classes 2 and 3; and the respective salaries specifically provided for such vacant positions may be reduced to pay the salaries of the privates so appointed to class 1.

(a-1)(1) The Mayor shall appoint the Chief of Police, with the advice and consent of the Council, pursuant to § 1-523.01(a).

(2) The Chief of Police may be selected for appointment from among the ranks of officers and members of the Metropolitan Police Department, or from outside the department.

(3) A person selected for appointment as Chief of Police from outside the department shall be paid from the DX Schedule for subordinate agency head positions pursuant to § 1-610.52 and, unless otherwise provided by law, shall be eligible to receive retirement and other benefits as prescribed in subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.].

(4) A person selected for appointment as Chief of Police from among the ranks of officers and members of the department shall be paid from the DX Schedule for subordinate agency heads pursuant to § 1-610.52 and, unless otherwise provided by law, shall be subject to the retirement provisions for officers and members of the Metropolitan Police Department.

(b)(1) The Chief of Police shall recommend to the Director of Personnel criteria for Career Service promotions and Excepted Service appointments to Inspector, Commander, and Assistant Chief of Police that address the areas of education, experience, physical fitness, and psychological fitness. The recommended criteria shall be the same for Career Service promotions and Excepted Service appointments to these positions. When establishing the criteria, the Chief of Police shall review national standards, such as the Commission on Accreditation for Law Enforcement Agencies.

(2) All candidates for the positions of Inspector, Commander, and Assistant Chief of Police shall be of good standing with no disciplinary action pending or administered resulting in more than a 14-day suspension or termination within the past 3 years.

(c) Effective April 21, 2003, Charles H. Ramsey, Chief of Police, shall serve in the capacity of Chief of Police for a term of 5 years, except that the Mayor may earlier terminate Chief Ramsey with or without cause.

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056; May 26, 1908, 35 Stat. 296, ch. 198; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1; Sept. 30, 2004, D.C. Law 15-194, § 102, 51 DCR 9406; Mar. 2, 2007, D.C. Law 16-199, § 3, 53 DCR 8832; May 13, 2008, D.C. Law 17-154, § 3, 55 DCR 3678.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-104. 1973 Ed., § 4-103.

Effect of amendments. — D.C. Law 15-194 designated the existing text as subsection (a); and added subsec. (b).

D.C. Law 16-199 added subsec. (c).

D.C. Law 17-154 added subsec. (a-1).

Emergency legislation. — For temporary (90 day) enactment, see § 501 of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

Legislative history of Law 15-194. — Law 15-194, the “Omnibus Public Safety Agency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-32, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 6, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 24, 2004, it was assigned Act No. 15-463 and transmitted to both Houses of Congress for its review. D.C. Law 15-194 became effective on September 30, 2004.

Legislative history of Law 16-199. — Law 16-199, the “Separation Pay, Term of Office and Voluntary Retirement Modifications for Chief of Police Charles H. Ramsey Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-733, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 23, 2006, it was assigned Act No. 16-494 and transmitted to both Houses of Congress for its review. D.C. Law 16-199 became effective on March 2, 2007.

Legislative history of Law 17-154. — Law 17-154 the “Omnibus Executive Service System, Police and Fire Systems, and Retirement Modifications for Chief of Police Cathy L. Lanier and Fire Chief Dennis L. Rubin Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-249 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act

No. 17-326 and transmitted to both Houses of Congress for its review. D.C. Law 17-154 became effective on May 13, 2008.

References in text. — 5 U.S.C. § 3306, referred to in the second proviso of the first sentence, was repealed February 10, 1978, 92 Stat. 25, Pub. L. 95-228, § 1. 5 U.S.C. § 3319 was repealed October 13, 1978, 92 Stat. 1149, Pub. L. 95-454, § 307. 5 U.S.C. § 7152 was transferred October 13, 1978, 92 Stat. 1216, Pub. L. 95-454.

Mayor's Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor's Order 97-88, May 9, 1997 (44 DCR 2959).

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that Office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated “Deputy Chief of Police, Executive Officer.” The Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated “Deputy Chief of Police, Chief of Detectives.” Each other Assistant Superintendent of the Metropolitan Police was designated “Deputy Chief of Police.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Construction with federal law.

Black District of Columbia police department employee's public employment did not preclude her from asserting §§ 1981 claims, even if District law provided that public employment was generally held by statute instead of by contract; federal interest for §§ 1981 claims

predominated with respect to her suit for racial discrimination, and her employment encompassed basis elements of contractual relationship needed for §§ 1981 claim, i.e., offer, acceptance and consideration. *Kennedy v. D.C. Gov't*, 519 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 78203 (2007).

§ 5-105.02. District of Columbia Chief of Police. [Repealed].

Repealed.

(May 1, 1998, 112 Stat. 100, Pub. L. 105-174, § 10007; May 13, 2008, D.C. Law 17-154, § 4, 55 DCR 3678.)

Prior Codifications. — 1981 Ed., § 4-104.1.

Emergency legislation. — For temporary (90 day) amendment of section, see § 832 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-101.4.

Legislative history of Law 17-154. — For Law 17-154, see notes following § 5-105.01.

§ 5-105.03. Oath of office.

The Mayor of the District of Columbia shall require an oath of office to be taken by the members of the police force, and shall make suitable provisions respecting the same, and for the registry thereof, and such oath may be taken before said Mayor, who is empowered to administer the same.

(R.S., D.C., § 351; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-105.1973 Ed., § 4-104.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-105.04. Probation period.

No person shall receive a permanent appointment who has not served the required probationary period, but the service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement, and pension in accordance with existing

law. If at any time during the period of probation, the conduct or capacity of the probationer is determined by the Mayor of the District of Columbia, or his designated agent, to be unsatisfactory, the probationer shall be separated from the service after advance written notification of the reasons for and the effective date of the separation. The retention of the probationer in the service after satisfactory completion of the probationary period shall be equivalent to a permanent appointment therein.

(Aug. 31, 1918, 40 Stat. 938, ch. 164; May 27, 1968, 82 Stat. 145, Pub. L. 90-320, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-106.
1973 Ed., § 4-105.

Mayor's Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor's Order 97-88, May 9, 1997 (44 DCR 2959).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-105.05. Composition of force; duties of positions.

The said Metropolitan Police force shall consist of 1 Chief of Police, who shall continue to be invested with such powers and charged with such duties as is provided by existing law; and also of 1 Assistant Superintendent with the rank of inspector; 4 surgeons for the Police and Fire Departments; 3 inspectors; 10 captains; 12 lieutenants, one of whom shall be Harbor Master; and such number of sergeants; and privates of class 3; privates of class 2; privates of class 1; mounted inspectors, captains, lieutenants, sergeants, and privates on horses and bicycles, and such others as said Mayor may deem necessary within the appropriations made by Congress; provided, that the inspectors shall perform the duties required on June 8, 1906, of captains in the force, that the captains shall command police precincts and perform such duty or duties in connection therewith as the laws and regulations of the said Mayor may prescribe. The Chief of Police shall be charged with the enforcement of all laws and regulations relating to the harbor, and employ the lieutenant, force, and means provided for this service in the execution of the duties appertaining thereto. The Metropolitan Police force shall consist of not less than 3,000 officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to § 5-129.03, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to § 5-712(a).

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; Mar. 3, 1905, 33 Stat. 902, ch. 1406;

June 8, 1906, 34 Stat. 221, ch. 3056; May 9, 1956, 70 Stat. 148, ch. 243, § 1; June 27, 1961, 75 Stat. 121, Pub. L. 87-60, § 1.)

Cross references. — Adult protective services, reports of abuse or neglect, see § 7-1903.

Criminal offenses, harbor regulations, see § 22-4401.

Criminal offenses, impersonating police officers, see § 22-1404.

Criminal offenses, prostitution, assessment of taxes against property used for, see § 22-2720.

Criminal proceedings, service of process, see § 16-703.

Designation of officer to take bonds or collateral, see § 23-1110.

Firearms control provisions, administration by Chief of Police, see § 7-2501.01 et seq.

Merit system, application to police officers and firefighters, see § 1-632.03.

Merit system, metropolitan police force, see § 1-603.01.

Pistols, issuance of licenses to carry, see § 22-4506.

Prevention of cruelty to animals and children, detailing officer to Humane Society, see §§ 44-1509 and 44-1510.

Uniform Controlled Substances Acts, enforcement, see § 48-905.01 et seq.

Weapons, permission to sell to designated classes of persons, see §§ 22-4508, 22-4510, and 22-4514.

Weapons, sales of, copying of records, see § 22-4510.

Wharves, control, see § 10-501.01 et seq.

Prior Codifications. — 1981 Ed., § 4-107. 1973 Ed., § 4-106.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Establishment of drug free zones: For provisions regarding procedures for the establishment of a public area as a drug free zone by the Chief of Police, see § 48-1002.

For temporary provisions regarding procedures for the establishment of a public area as a drug free zone by the Chief of Police, see § 3 of the Anti-Loitering/Drug Free Zone Emergency Act of 1996 (D.C. Act 11-278, May 29, 1996, 43 DCR 2974), § 3 of the Anti-Loitering/Drug Free Zone Legislative Review Emergency Act of 1996 (D.C. Act 11-319, July 31, 1996, 43 DCR 4487), § 3 of the Anti-Loitering/Drug Free Zone Congressional Review Emergency Act of 1996 (D.C. Act 11-426, October 28, 1996, 43 DCR 6331), § 3 of the Anti-Loitering/Drug Free Zone Second Congressional Review Emergency Act of 1996 (D.C. Act 11-468, December 30, 1996, 44 DCR 175), and § 3 of the Anti-Loitering/Drug Free Zone Congressional Review Emergency Act of 1997 (D.C. Act 12-55, March 31, 1997, 44 DCR 2219).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-105.06. Assistant to inspector commanding detective bureau.

On and after June 20, 1942, the Mayor of the District of Columbia may assign to duty as assistant to the inspector commanding the detective bureau in the Metropolitan Police Department any officer or member of the Metropolitan Police force and, during the period of such assignment, the said officer or member shall hold the rank and receive the pay of a captain of police and shall be eligible for assignment, by the said Mayor, as chief of detectives. For the duration of such latter assignment such officer or member shall hold the rank and receive the pay of a Deputy Chief of Police.

(June 20, 1942, 56 Stat. 374, ch. 427, § 1.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-108. 1973 Ed., § 4-106a.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-105.07. Age limits in original appointments.

The Council of the District of Columbia is authorized to determine and fix the minimum and maximum limits of age within which original appointments to the Metropolitan Police Department may be made.

(Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-109. 1973 Ed., § 4-107.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1979: The "Police Manual Amendment Act of 1979" (D.C. Law 3-32, Oct. 18, 1979, 26 DCR 778).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(90)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-105.08. Residence requirements for members of the Police and Fire Departments; waiver thereof; maintenance of telephone at residence. [Repealed].

Repealed.

(July 25, 1956, 70 Stat. 646, ch. 726, § 1; Aug. 30, 1964, 78 Stat. 698, Pub. L. 88-517, § 1; June 30, 1970, 84 Stat. 358, Pub. L. 91-297, title II, § 203.; June 24, 2004, D.C. Law 15-194, § 1201(a), 51 DCR 9406.)

Prior Codifications. — 1981 Ed., § 4-129. 1973 Ed., § 4-132a.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-105.09. Service of process.

No later than 60 days following March 6, 2007, the Chief of Police, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules establishing a procedure for service of process upon sworn members of the Metropolitan Police Department for actions arising out of the performance of their duties. The rules shall include the following:

- (1) A process whereby the sworn member is notified that service of process is being attempted on him or her;
- (2) A process for notifying a process server and the public of a specific time and place where service will be made;
- (3) The designation of one or more offices, at the command level or the department's general counsel, where service shall be accepted on behalf of the sworn member, and
- (4) The discipline to be meted out against any sworn member who avoids service of process.

(Mar. 6, 2007, D.C. Law 16-223, § 101, 53 DCR 10221.)

Legislative history of Law 16-223. — Law 16-223, the “Metropolitan Police Department Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-586, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings

on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 19, 2006, it was assigned Act No. 16-552 and transmitted to both Houses of Congress for its review. D.C. Law 16-223 became effective on March 6, 2007.

Subchapter IV. Metropolitan Police Department Application, Appointment, and Training Requirements.

§ 5-107.01. Minimum standards for members of the Metropolitan Police Department.

- (a) Repealed.
- (b) Repealed.
- (c) Repealed.
- (d) Repealed.
- (e) As of March 6, 2007, to be eligible for appointment as a sworn member of the Metropolitan Police Department, an applicant shall have either:
 - (1) Successfully completed 60 hours of post-secondary education at an accredited college or university;
 - (2) Served in the Armed Forces of the United States, including the Organized Reserves and National Guard, for at least 3 years on active duty and if separated from the military, have received an honorable discharge; or
 - (3) Served at least 5 years in a full-duty status with a full-service police department in a municipality or state within the United States and have resigned or retired in good standing.

(Oct. 4, 2000, D.C. Law 13-160, § 202, 47 DCR 4619; Sept. 30, 2004, D.C. Law 15-194, § 702(a), 51 DCR 9406; Mar. 6, 2007, D.C. Law 16-223, § 201(a), 53 DCR 10221.)

Effect of amendments. — D.C. Law 15-194 rewrote subsec. (a) and added subsec. (d). Prior to amendment, subsec. (a) had read as follows: “(a) To be eligible for appointment as a sworn member of the Metropolitan Police Department, as of December 31, 2003, an applicant must have successfully completed 2 years of post-secondary education.”

D.C. Law 16-223, repealed subssecs. (a) to (d), and added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Metropolitan Police Department Education Requirement Clarification Temporary Amendment Act of 2004 (D.C. Law 15-147, April 22, 2004, law notification 51 DCR 4931).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Metropolitan Police Department Educational

Requirement Clarification Emergency Amendment Act of 2004 (D.C. Act 15-323, January 28, 2004, 51 DCR 1586).

Legislative history of Law 13-160. — Law 13-160, the “Omnibus Police Reform Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for its review. D.C. Law 13-160 became effective on October 4, 2000.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 16-223. — For Law 16-223, see notes following § 5-105.09.

§ 5-107.01a. Obligated service.

(a) A candidate for appointment as a sworn member of the Metropolitan Police Department shall execute an agreement obligating the candidate to serve a minimum of 2 years as a sworn member upon successful completion of the initial training program.

(b) Except as provided in subsection (c) of this section, a sworn member who voluntarily leaves the Metropolitan Police Department before fulfilling the 2-year term of obligated service required under subsection (a) of this section shall reimburse the District for expenses incurred by it, up to \$5,000, in connection with that member’s initial training, other than the member’s pay. The Chief of Police may increase the \$5,000 limit on reimbursement by General Order or rulemaking.

(c) A sworn member who voluntarily leaves the Metropolitan Police Department before fulfilling the 2-year term of obligated service shall not be liable for reimbursement to the District if:

(1) The separation is directly due to the need to care for an individual in the member’s immediate family; or

(2) The member transfers to another law enforcement agency within the District government and completes the 2-year term at that agency.

(d) The Office of the Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia to recover the monies owed the District under subsection (b) of this section along with the costs of the action, including reasonable attorney’s fees.

(Oct. 4, 2000, D.C. Law 13-160, § 202a, as added Mar. 6, 2007, D.C. Law 16-223, § 201(b), 53 DCR 10221.)

Legislative history of Law 16-223. — For Law 16-223, see notes following § 5-105.09

§ 5-107.02. Mandatory continuing education program for sworn members of the Metropolitan Police Department.

The Department shall implement a program of continuing education for its sworn members, which shall consist of a minimum of 32 hours of training each year.

(Oct. 4, 2000, D.C. Law 13-160, § 203, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-107.01.

§ 5-107.02a. Physical examinations and agility standards.

(a) All sworn members of the Metropolitan Police Department shall be required to pass, at least biennially, a physical examination and a physical agility test. The physical examination shall be performed by a physician at the Police and Fire Clinic using current medical standards adopted after consultation with medical professionals within 180 days of September 30, 2004. The physical agility testing shall be based on full-duty physical performance standards adopted within 180 days of the September 30, 2004.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section within 180 days of September 30, 2004.

(Oct. 4, 2000, D.C. Law 13-160, § 203a, as added Sept. 30, 2004, D.C. Law 15-194, § 702(b), 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-107.03. Establishment of District of Columbia Police Officers Standards and Training Board.

(a) There is hereby established the District of Columbia Police Officers Standards and Training Board ("Board").

(b) Membership on the Board shall consist of the following 11 persons who shall be voting members:

- (1) The Mayor or the Mayor's designee;
- (2) Chief of Police, Metropolitan Police Department or the Chief of Police's designee;
- (3) Corporation Counsel for the District of Columbia or the Corporation Counsel's designee;
- (4) United States Attorney for the District of Columbia or the United States Attorney's designee;
- (5) Assistant Director in Charge, Washington Field Office, Federal Bureau of Investigation or the Assistant Director's designee;
- (6) Representative of the District of Columbia Superior Court appointed by the Mayor in consultation with the Chief Judge of the Superior Court;

(7) One criminal justice educator appointed by the Mayor;

(8) One police representative appointed by the certified collective bargaining agent, and one police representative appointed by the Mayor in consultation with the Chief of Police.

(9) Two community representatives appointed by the Mayor.

(b-1) The Mayor, in consultation with the Chief of Police, shall appoint one Metropolitan Police Department Reserve Corps representative as an advisory, nonvoting member of the Board.

(c) The following persons may be advisory, nonvoting members of the Board:

(1) The Executive Director, Maryland Police and Correctional Training Commissions; and

(2) The Director, Division of Training and Standards, Virginia Department of Criminal Justice.

(d) The appointments to the Board shall be for a 3-year term.

(e) No member shall serve beyond the time when he or she holds the office or employment by reason of which he or she was initially eligible for appointment and any member chosen to fill a vacancy created otherwise than by expiration of a term shall be appointed for the unexpired portion of the term of the member whom he or she succeeds.

(f) The members shall receive no salary but members shall be reimbursed for their expenses lawfully incurred in the performance of their official functions.

(g) Members appointed to the Board by the Mayor may be removed by the Mayor for incompetence, neglect of duty, or misconduct.

(h) The Chairperson shall be appointed by the Mayor from among the voting members of the Board and the vice chair shall be elected from among the voting members.

(i) The Board shall hold its initial meeting promptly after the appointment and qualification of its members. Thereafter, the Board shall meet a minimum of twice each calendar year and at other times as it or the Board's Chairperson may determine. The majority of the voting members of the Board shall constitute a quorum for the transaction of business, the performance of duties or for the exercise of any of its authority. Advisory members shall be entitled to participate in the business and deliberation of the Board, but shall not be entitled to vote. The Board shall establish its own procedures and requirements with respect to the place and conduct of its meetings.

(Oct. 4, 2000, D.C. Law 13-160, § 204, 47 DCR 4619; Sept. 30, 2004, D.C. Law 15-194, § 302(a), 51 DCR 9406.)

Effect of amendments. — D.C. Law 15-194, in the section heading and subsec. (a), substituted "District of Columbia Police Officers Standards and Training Board" for "District of Columbia Police Training and Standards Board"; rewrote par. (8) of subsec. (b); added subsec. (b-1); in subsec. (c), substituted

"Commissions" for "Commission" in par. (1), and rewrote par. (2).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-107.01.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-107.04. Duties of the Board; standards for applicants; continuing education program.

(a) The Board shall establish application and appointment criteria that include the following:

- (1) That an applicant be a citizen of the United States at the time of application;
- (2) Age limits;
- (3) Height and weight guidelines;
- (4) Physical fitness and health standards;
- (5) Psychological fitness and health standards;
- (6) The completion of a criminal background investigation;
- (7) The consideration to be placed on an applicant's participation in court-ordered community supervision or probation for any criminal offense at any time from application through appointment;
- (8) The consideration to be placed on an applicant's criminal history, including juvenile records;
- (9) The completion of a background investigation;
- (10) Military discharge classification information;
- (11) Information on the prior service with the Metropolitan Police Department.

(b) The administrative work of the Board shall be carried out by members of the Metropolitan Police Department as appointed by the Chief of Police.

(c) Notwithstanding the standards established by the Board in accordance with subsection (a) of this section, the Chief of Police is authorized to deny employment to any applicant based upon conduct occurring while the applicant was a minor if, considering the totality of the circumstances, the Chief of Police determines that the applicant has not displayed the good moral character or integrity necessary to perform the duties of a sworn member of the Metropolitan Police Department.

(d) Each applicant selected for appointment as a sworn member of the Metropolitan Police Department shall successfully complete an initial training program developed by the Board, unless the applicant receives a waiver pursuant to paragraph (5) of this subsection.

(1) The Board shall determine:

(A) The minimum number of hours required for the initial training program;

(B) If and under what circumstances the initial training program will include temporary deployment of the applicant prior to regular deployment as a sworn member; and

(C) The subjects to be included as part of every applicant's initial training.

(2) Prior to deployment, each applicant shall successfully complete an initial firearms training program developed by the Board.

(3) The Board shall determine the appropriate sequence, content, and duration of the initial training program and of the initial firearms training program.

(4) The Metropolitan Police Department is authorized to utilize the services of other law enforcement agencies or organizations engaged in the education and training of law enforcement personnel to satisfy any portion of the initial training program or the initial firearms training program.

(5) The Chief of Police is authorized to modify or waive the initial training program and initial firearms training program requirements for either of the following:

(A) Any applicant who is a former sworn member of the Metropolitan Police Department who has been separated from employment with the Metropolitan Police Department for less than 3 years; or

(B) Any former member of a federal, state, or local law enforcement agency who has completed training similar to the Metropolitan Police Department's initial training program and initial firearms training program and who has been separated from employment with a federal, state, or local law enforcement agency for less than 3 years.

(e) The Board shall:

(A) Develop and implement a program of continuing education for its sworn members.

(B) Determine the components for the Metropolitan Police Department's continuing education program;

(C) Determine the appropriate consequence, including ineligibility for promotion, if a member fails to satisfy the continuing education requirement; and

(D) Require each sworn member to successfully complete a firearms training program.

(E) The Metropolitan Police Department is authorized to utilize the services of other law enforcement agencies or organizations engaged in the education and training of law enforcement personnel to satisfy any portion of the required continuing education or the firearms training program. The Board shall establish guidelines for the approval of any training program.

(f) The Board shall:

(A) Establish the minimum requirements for any instructor of any component of the Metropolitan Police Department's initial training program, continuing education program, or firearms training program; and

(B) Through the Chief of Police, not later than October 31 of each calendar year, deliver a report to the Mayor and the Council concerning the Metropolitan Police Department's initial training program, continuing education program, and firearms training program.

(C) The report shall include the number of:

(i) Applicants who have successfully completed the application process;

(ii) Applicants who have completed the initial training program;

(iii) Sworn members who have completed the continuing education and firearms training programs; and

(iv) A plan for the following calendar year's recruiting efforts and initial and continuing education programs, including plans for correcting any deficiencies indicated by the data from the preceding calendar year.

(f-1) Within 24 months of September 30, 2004, the Board shall:

- (1) Review the tuition assistance program;
- (2) Evaluate and make recommendations on the issue of creating separate career tracks for patrol and investigations;
- (3) Establish minimum selection and training standards for members of the District of Columbia Housing Authority Police Department; and
- (4) Review the Metropolitan Police Department Reserve Corps program's training and standards and make recommendations, as necessary.
- (g) Any applicant who met the age requirement at the time of application and who was denied appointment on the basis of racial discrimination, as determined by the Director of the Office of Human Rights, may be appointed notwithstanding the applicant's age at the time of that determination.
- (h) Applications for appointment to the Metropolitan Police Department shall be made on forms furnished by the Metropolitan Police Department.
- (i) Appointments to the Metropolitan Police Department shall be for a probationary period to be determined by the Board. Continuation of service after the expiration of that period shall be dependent upon the conduct of the appointee and his or her capacity for the performance of the duties to which assigned, as indicated by reports of superior officers. The probationary period shall be an extension of the examination period.
- (j) If the Police and Fire Clinic shall find any probationer physically or mentally unfit to continue his or her duties, that probationer shall be required to appear before the Police and Firefighter's Retirement and Relief Board. That Board shall make any findings as are required pursuant to § 5-713, and those findings shall be incorporated in a recommendation submitted to the Mayor.
- (k) Each police officer appointed shall maintain a level of physical fitness to be determined by the Board. The final determination with respect to inappropriate fitness levels shall be made by the Medical Director of the Police and Fire Clinic.
- (l) This section shall become effective upon adoption by the Chief of Police of regulations to implement this section.

(Oct. 4, 2000, D.C. Law 13-160, § 205, 47 DCR 4619; Sept. 30, 2004, D.C. Law 15-194, § 302(b), 51 DCR 9406.)

Effect of amendments. — D.C. Law 15-194 substituted "Board" for "Training and Standards Board" in the introductory language of subsec. (d), par. (1) of subsec. (d), subsec. (e), the introductory language of subsec. (f), and subsecs. (i) and (k); substituted "October 31" for

"November 31" in subpar. (B) of subsec. (f); and added subsec. (f-1).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-107.01.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Subchapter V. Cadet Program.

§ 5-109.01. Cadet program authorized; purpose; preference for appointment; appropriations.

- (a) The Chief of the Metropolitan Police Department shall establish a police officer cadet program, which shall include senior year high school students and

young adults under 21 years of age residing in the District of Columbia who are graduates of a high school in the District, for the purpose of instructing, training, and exposing interested persons to the operations of the Metropolitan Police Department and the duties, tasks, and responsibilities of serving as a police officer with the Metropolitan Police Department.

(b) A person successfully completing the required training and service in a cadet program established pursuant to this section shall be accorded full preference for appointment as a member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department, if the person shall have met all other requirements pertaining to membership in the chosen Department.

(c) There may be appropriated the funds necessary for the administration of this section.

(Mar. 9, 1983, D.C. Law 4-172, § 2(a), (c), (d), 29 DCR 5745; Oct. 19, 2000, D.C. Law 13-172, § 832, 47 DCR 6308; June 19, 2001, D.C. Law 13-313, § 20(a), 48 DCR 1873; Sept. 30, 2004, D.C. Law 15-194, § 402(b), 51 DCR 9406.)

Cross references. — Cadet training programs, police officers or firefighters, funding and administration, see § 38-912.

Section references. — This section is referred to in §§ 5-109.02 and 5-419.

Prior Codifications. — 1981 Ed., § 4-107.1.

Effect of amendments. — D.C. Law 13-172 rewrote subsec. (a), which had read:

“The Chief of the Metropolitan Police Department may establish a police officer cadet program for the purpose of instructing, training, and exposing interested persons, primarily young adults residing in the District of Columbia, to the operations of the Metropolitan Police Department and the duties, tasks, and responsibilities of serving as a police officer with the Metropolitan Police Department.”

D.C. Law 13-313, in subsec. (a), substituted “21 years” for “the 21 years”.

D.C. Law 15-194, in subsec. (b), substituted “Fire and Emergency Medical Services Department” for “District of Columbia Fire Department”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 832 of the Fiscal Year 2001 Budget Support Emergency

Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

Legislative history of Law 4-172. — Law 4-172, the “Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-313. — Law 13-313, the “Technical Amendments Act of 2000,” was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to Both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-109.02. Rules.

The Mayor or the Mayor’s designated agent may issue rules necessary for the implementation and operation of the cadet programs established pursuant to §§ 5-109.01 and 5-418.

(Mar. 9, 1983, D.C. Law 4-172, § 6, 29 DCR 5745.)

Prior Codifications. — 1981 Ed., § 4-107.2.

Legislative history of Law 4-172. — For

legislative history of D.C. Law 4-172, see Historical and Statutory Notes following § 5-109.01.

Subchapter VI. Clothing.

§ 5-111.01. Clothing — Rules of uniformity; failure to comply with rules.

The Council of the District of Columbia shall provide specific rules for uniform clothing of the police force, and any member shall be removed from the force for not complying with such rules.

(R.S., D.C., § 365; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-126. 1973 Ed., § 4-130.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(96) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Authority of court.

In general.

Refusal to comply with regulations.

Validity of grooming regulations.

Authority of court.

Compelling police department to hire and assign plaintiff as an undercover agent, so that he would not have to comply with department grooming regulations, would constitute an undue interference by the court in the internal administration of the department. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS 12885 (1975), remanded by 559 F.2d 726, 182 U.S. App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

In general.

While individual citizens have a constitutional right to wear beards, sideburns, and moustaches in any form and to any length they may choose, such right is not absolute nor is it fundamental. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS

12885 (1975), remanded by 559 F.2d 726, 182 U.S. App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

Refusal to comply with regulations.

Assuming that challenged general order of metropolitan police department prescribing standards of hair length was valid, deliberate refusal to comply with it justified the District Unemployment Compensation Board in adopting conclusion that police officer who refused to comply with rule was insubordinate and that such behavior amounted to "misconduct" within meaning of section of code providing that employee who is discharged for "misconduct" shall be denied unemployment compensation benefits for period of from four to nine weeks. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Police officer's willingness to accept assignments to harbor police job or plainclothes squad, assignments which he claimed were not covered by hair-grooming regulations, would not justify his refusal to conform to rule pre-

scribing standards of hair length for purposes of determining whether police officer's refusal to follow rules was "misconduct" disqualifying him for unemployment compensation benefits. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Validity of grooming regulations.

Police department hair regulation was rationally connected to the effective functioning of the department and to specific objectives that the district sought to achieve by its choice of organization, dress and equipment for its policemen. U.S. Const. Amend. 14. *Marshall v. District of Columbia Government*, 559 F.2d 726, 1977 U.S. App. LEXIS 13677 (C.A.D.C. 1977).

Police department grooming regulations did not violate officer's freedom of religion and were not arbitrary and capricious. *Marshall v. District of Columbia Government*, 559 F.2d 726, 1977 U.S. App. LEXIS 13677 (C.A.D.C. 1977).

Police department grooming regulations were not arbitrary or capricious, nor did they deprive plaintiff officer of his rights to due process and equal protection. U.S. Const. Amend. 5. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS 12885 (1975), remanded by 559 F.2d 726, 182 U.S. App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

In determining whether police department grooming regulations were violative of free exercise clause, test was whether the government interest to be furthered was of sufficient magnitude to override the interest claiming protection under the free exercise clause. U.S. Const. Amend. 1. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS 12885 (1975), remanded by 559 F.2d 726, 182 U.S.

App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

Police department grooming regulations promoted a substantial governmental interest (projection of an image facilitating effective functioning of the police department necessary to insure the safety and security of citizens) which outweighed plaintiff officer's interest in maintaining his hair and beard as his religious beliefs dictated, and said regulations did not unconstitutionally infringe on plaintiff's free exercise rights under the First Amendment. U.S. Const. Amend. 1. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS 12885 (1975), remanded by 559 F.2d 726, 182 U.S. App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

While a policeman does not surrender his constitutional rights upon joining the police force, a police grooming regulation will be upheld if it is reasonably related to a legitimate governmental interest. *Marshall v. District of Columbia*, 392 F. Supp. 1012, 1975 U.S. Dist. LEXIS 12885 (1975), remanded by 559 F.2d 726, 182 U.S. App. D.C. 105, 1977 U.S. App. LEXIS 13677, 14 Empl. Prac. Dec. (CCH) P7525 (1977).

Standards of appearance for uniformed police officers set forth in challenged departmental order prescribing standards of hair lengths were amply supported not only because "uniformly applied to a class of employees for a reasonable business purpose" but also because a policy which would permit patrolmen to let their hair and whiskers grow wild would present a danger to the public and, thus, order was excluded from ordinance prohibiting discrimination on basis of personal appearance. *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

§ 5-111.02. Display of United States flag or colors.

(a) The uniform of officers and members of the United States Park Police force, the United States Secret Service Uniformed Division, the Capitol Police, and the Metropolitan Police force of the District of Columbia shall bear a distinctive patch, pin, or other emblem depicting the flag of the United States or the colors thereof.

(b) The Secretary of the Interior in the case of the United States Park Police force, the Secretary of the Treasury in the case of the United States Secret Service Uniformed Division, the Capitol Police Board in the case of the Capitol Police, and the Mayor of the District of Columbia in the case of the Metropolitan Police force shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) This section shall take effect 180 days after June 30, 1970.

(June 30, 1970, 84 Stat. 357, Pub. L. 91-297, title II, § 201; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Prior Codifications. — 1981 Ed., § 4-127. 1973 Ed., § 4-130a.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-111.03. Appropriations.

(a) For furnishing uniforms and all other official equipment prescribed by Department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding \$75 per annum for each member of the Metropolitan Police, to be expended subject to rules and regulations to be prescribed by the Mayor of the District of Columbia.

(b) The Chief of Police of the Metropolitan Police force, the Fire Chief of the District of Columbia Fire Department, the Commanding Officer of the United States Secret Service Uniformed Division, and the Commanding Officer of the United States Park Police force are each authorized to provide a clothing allowance, not to exceed \$300 in any 1 year, to an officer or member assigned to perform duties in "plainclothes." Such clothing allowance is not to be treated as part of the officer's or member's basic compensation and shall not be used for the purpose of computing his overtime, promotions, or retirement benefits. Such allowance for any officer or member may be discontinued at any time upon written notification by the authorizing official.

(May 25, 1926, 44 Stat. 635, ch. 381; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410, title I, § 112; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; June 4, 1982, D.C. Law 4-115, § 3, 29 DCR 1701.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-128. 1973 Ed., § 4-131.

Legislative history of Law 4-115. — Law 4-115, the "District of Columbia Protective Services Police Identification Act of 1982," was introduced in Council and assigned Bill No. 4-379, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-178 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter VII. Records.

PART A.

GENERAL — METROPOLITAN POLICE DEPARTMENT.

§ 5-113.01. Records — Required.

The Mayor of the District of Columbia shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(A) Case number, date of arrest, and time of recording arrest in arrest book;

(B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(C) Offense with which person arrested was charged and place where person was arrested;

(D) Name and address of complainant;

(E) Name of arresting officer; and

(F) Disposition of case;

(4A) The Metropolitan Police force shall maintain a computerized record of a civil protection order or bench warrant issued as a result of an intrafamily offense; and

(5) Such other records as the Council of the District of Columbia considers necessary for the efficient operation of the Metropolitan Police force.

(R.S., D.C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1; Apr. 30, 1991, D.C. Law 8-261, § 4, 37 DCR 5001.)

Cross references. — Environmental controls, smoking restrictions, fines and penalties, see § 7-1706.

Section references. — This section is referred to in §§ 5-113.02 and § 5-113.06.

Prior Codifications. — 1981 Ed., § 4-131. 1973 Ed., § 4-134.

Legislative history of Law 8-261. — Law 8-261, the “District of Columbia Prevention of Domestic Violence Amendment Act of 1990,” was introduced in Council and assigned Bill

No. 8-192, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-239 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(98) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Arrest records.

—Expungement, arrest records.

—In general.

—Relief from maintenance of arrest records, generally.

Complaint records.

Construction with other law.

Criminal records, generally.

Defamation.

In general.

Injunctions.

Jurisdiction.

Purpose.

Review.

Arrest records.

— Expungement, arrest records.

Persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 were entitled to full expungement of their arrest records, including entry of court order declaring that the seizures should be deemed not to have been “arrests.” U.S. Const. Amends. 1, 4. *Tatum v. Morton*, 562 F.2d 1279, 1977 U.S. App. LEXIS 12080 (C.A.D.C. 1977).

Arrestees’ action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clearcut federal controversy existed. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a, b). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

The court may order the expungement of records, including arrest records, when that remedy is necessary and appropriate in order to preserve basic constitutional rights. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Expungement of local arrest records is appropriate remedy in the wake of police action in violation of constitutional rights. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

District of Columbia statute which provides that Washington police records must be preserved did not preclude the federal courts from giving relief, to persons in the District of Columbia deprived of constitutional rights, that would be available to persons in the various states from the appropriate federal courts of those districts and did not preclude expungement of arrest records. U.S. Const. Amend. 4; D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

A motion to expunge a record of arrest is not a “criminal case,” and civil rules govern, even though motion has its origin in a criminal charge. Fed.Rules App.Proc. rule 4(a), 18 U.S.C.; D.C. Code Court of Appeals Rules, rule 4, subd. 2(a)(1), (b)(1). *Irani v. District of Columbia*, 292 A.2d 804, 1972 D.C. App. LEXIS 412 (1972).

Where extent to which records were ordered expunged of arrest was clear and nothing remained to be done other than necessary ministerial steps to gather records together and place them under seal and no further order of court was then contemplated, order that arrest record be expunged was a “final order” from which parties had 30 days to appeal, even though order directed that sealed records were to remain in custody of official until further order of court and even though police had specific time in which to notify arrestee’s counsel of compliance, and notice of appeal filed some five months later was untimely. D.C. Code

Court of Appeals Rules, rule 4, subd. 2(a)(1), (b)(1). *Irani v. District of Columbia*, 292 A.2d 804, 1972 D.C. App. LEXIS 412 (1972).

Fact that graduate student arrested for parading without permit established without contradiction that he had been arrested in connection with civil disturbance at which he was innocently and unavoidably present, having just left cancelled class at local university where disturbance was in process, justified some relief, in action by the student to have arrest record expunged. D.C. Code § 23-610. *Irani v. District of Columbia*, 272 A.2d 849, 1971 D.C. App. LEXIS 268 (App. 1971).

Duncan Report rules, as adopted by District of Columbia, furnish reasonable and adequate protection to citizens against misuse of arrest records, and no further order is required for that purpose except in rare cases presenting such unusual facts as to justify trial court in ordering a particular arrest record completely expunged. In re *Alexander*, 259 A.2d 592, 1969 D.C. App. LEXIS 366 (App. 1969).

Case of defendant charged with disorderly conduct presented no unusual facts such as would justify trial court in ordering particular arrest record completely expunged, and trial court's order of nondisclosure of defendant's arrest record, after dismissing information against defendant, would be ordered vacated. In re *Alexander*, 259 A.2d 592, 1969 D.C. App. LEXIS 366 (App. 1969).

— In general.

Any arrest made during May, 1971, civil disturbances in the District of Columbia that was not accompanied by contemporaneous polaroid photograph and field arrest form executed by one who was in fact arresting officer was presumptively invalid but the presumption would be rebuttable upon affirmative showing that any particular arrest was based upon probable cause. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

The government of the District of Columbia has no absolute right to do what it wishes with police arrest records. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

District of Columbia Court of General Sessions had power, under the theory of "ancillary jurisdiction", to issue an order regarding dissemination of defendant's arrest record, where the arrest was an integral part of the criminal proceeding, the order prohibiting dissemination of arrest record did not require an independent fact-finding process, and the order did not deprive the District government of a procedural right, such as trial by jury. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

Where police agents of District of Columbia arrested defendant, the District's corporation counsel prosecuted defendant in name of the District, and court could properly issue orders against the District regarding record of defendant's arrest, court's order, to be effective, could properly run against the District's Police Department which was given notice of the order. D.C. Code § 1-102. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep arrest books containing information concerning, inter alia, accused, offense and complainant, and government was not required to produce resume for inspection and copying by defense even if arrest books did not contain all information required by statute to be contained therein. D.C. Code 1961, § 4-134 and (1, 4). *United States v. Ross*, 259 F. Supp. 388, 1966 U.S. Dist. LEXIS 7410 (D.D.C.1966).

Trial court did not abuse its discretion in denying defendant's motion to seal arrest records based on defendant's failure to file motion until four years after simple assault charge was dismissed for want of prosecution, where defendant failed to offer any justification for his failure to file motion within 120 day time limit. *Williams v. United States*, 816 A.2d 53, 2003 D.C. App. LEXIS 31 (2003).

Ordinance prohibiting disclosure of arrest records, standing alone, prohibited release of any arrest records where arrest did not lead to conviction. *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Absent direct attack on any particular use made by law enforcement officials of arrest records, Court of Appeals had to assume, on review of proceedings in which relief from maintenance of arrest records was sought, that the arrest records had appropriate role in law enforcement. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Arrest records of arrestee who was arrested for murder that was discovered to have been suicide, arrestee who was arrested for failure to attend driving school but who had in fact attended it, and arrestee who was arrested for carrying pistol but who law enforcement officials conceded was wrong man, had no potential usefulness in assisting officials of criminal justice system or otherwise helping prevention of crime and apprehension of offenders, and thus such arrestees were entitled to equitable relief of court sealing the arrest records and entry of order explaining grounds for failure to prosecute. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. D.C. Code §§ 4-134, 4-134a. *District of Columbia v. Sophia*, 306 A.2d 652, 1973 D.C. App. LEXIS 317 (1973).

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. D.C. Code §§ 4-134, 4-134a. *District of Columbia v. Sophia*, 306 A.2d 652, 1973 D.C. App. LEXIS 317 (1973).

District of Columbia Court of General Sessions has power to issue an order regarding arrest record in a criminal case which has been before the court. In *re Alexander*, 259 A.2d 592, 1969 D.C. App. LEXIS 366 (App. 1969).

— **Relief from maintenance of arrest records, generally.**

In absence of governmental concession in proceeding seeking relief from maintenance of arrest records, arrestee bears burden of proving that notation of arrest is erroneous; arrestee must prove that the arrest was based on mistaken identity or that no crime had in fact been committed at time of his arrest. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

In proceedings seeking relief from maintenance of arrest records, arrestee, who was not prosecuted due to inability to locate prosecution witnesses, did not establish that his arrest was based on mistaken identity or that no crime had in fact been committed at time of his arrest, as required to be entitled to equitable relief. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Where request for equitable relief from maintenance of record of arrest shows by clear and convincing evidence that he did not commit crime for which he was arrested or that no crime at all had been at that time committed, trial court shall order prosecutor to collect all records reflecting the arrest, except precinct book, wherever located and file them with the courts, and if the court subsequently is satisfied by appropriate affidavit that all extant records relating to such arrest are before it, the court should then seal such records; the trial court should also make findings of fact detailing basic facts of the arrest and postarrest occurrences and enter conclusion of law either that movant did not commit the crime or that no crime was committed, and such order may be properly

authenticated and given to each movant for his future use. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Complaint records.

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep general complaint files in which name and residence of complainant was entered, and government was not required to produce it for inspection and copying by defense which had already learned identity and residence of informant. D.C. Code 1961, §§ 4-134, 4-135. In *re Alexander*, 259 A.2d 592, 1969 D.C. App. LEXIS 366 (App. 1969).

In proceeding in which accused were charged with assault on three police officers, constitutional dictates of United States Supreme Court decision pertaining to suppression of material evidence by prosecution did not require that Government disclose documents sought under accused's motion for discovery and inspection of complaints alleging misconduct against such officers, forms filed with respect to the officers and "supporting documents. . . reports, results of any investigations" in connection with any complaint against the officers. D.C. Code §§ 4-134, 22-505(a). *United States v. Akers*, 374 A.2d 874, 1977 D.C. App. LEXIS 333 (1977).

In view of fact that "general complaint file" required to be open to public inspection did not contain citizen complaints of police misconduct, but rather reports reflecting complaints of criminal offenses, statutory provision pertaining to general complaint files did not entitle defendant to inspect any "general complaints" against police officers, in prosecution arising from exchange of gunfire between officer and defendant, though such material might be susceptible to production by traditional subpoena. D.C. Code §§ 4-134(1), 4-135. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

Construction with other law.

Ordinance promulgated by District of Columbia Board of Commissioners was not "statute" for purposes of Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute; Board did not possess authority to enact statutes. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Word "statute" as used in Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute was intended to be used in its ordinary meaning and, thus, records of driver's arrest were not exempt from disclosure, despite existence of ordinance prohibiting disclosure of arrest re-

cords. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Criminal records, generally.

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971. *Sullivan v. Murphy*, 380 F. Supp. 867, 1974 U.S. Dist. LEXIS 6897 (1974).

Statute governing preservation and destruction of metropolitan police force records relates to records required to be kept under statute requiring keeping, inter alia, of arrest books and to central criminal records required under another statute, as well as to records of receipt and disbursement of money posted by arrested persons as collateral, photographs and fingerprints. D.C. Code §§ 4-134(4), 4-134a, 4-137, 23-610. *Spock v. District of Columbia*, 283 A.2d 14, 1971 D.C. App. LEXIS 214 (1971).

Defamation.

In defamation action brought by individual who had been arrested for theft against store operator who accused her of such offense, reasonable jurors could have found that operator acted maliciously by intentionally or recklessly lying about individual's theft of funds, and thus operator was not entitled to qualified privilege in relation to defamation claim; operator told investigator that individual had committed theft had such claim remain unchanged until operator was unable to identify individual in line-up on eve of trial, and soon after individual filed defamation action, operator recanted his story completely-claiming that he never told investigator that individual committed theft. *Carter v. Hahn*, 821 A.2d 890, 2003 D.C. App. LEXIS 219 (2003).

Department of Corrections (DOC) correctional officer employed by District of Columbia was a "public official," and she therefore was required to prove actual malice in her defamation action against the District, relating to statement in facility-created employee newsletter implying that the correctional officer had received her officer-in-charge position through a "connection." *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Statement in facility-created employee newsletter, implying that correctional officer employed by District of Columbia's Department of Corrections (DOC) had received her officer-in-charge position through a "connection," was not published with "actual malice," as element for a public official's defamation claim; author could have reasonably believed officer had a "connection," based on her having gone hunting with member of employee assignment committee, their families having visited each other's homes, and their children having been on an outing together, and based on her friendly relationship with another committee member. *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Failure of editor and publisher of facility-created employee newsletter to read the newsletter, before it was published with a statement implying that correctional officer employed by District of Columbia's Department of Corrections (DOC) had received her officer-in-charge position through a "connection," did not establish "actual malice," as element for a public official's defamation claim; editor and publisher testified they had not read the article because they were preoccupied with their other duties at the facility, publisher testified he was a "publisher in name only" who did not review materials submitted for publication, and editor believed the article containing the statement was a healthy discussion of a matter of public interest within the facility. *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Insofar as actual damages were alleged, the standard of care applicable to defendant newspaper's defamation of plaintiff, a private individual, was negligence, unless a common-law privilege applied; however, no such privilege applied, since there was no "fair comment" privilege to print the falsehood that plaintiff had shot his wife "during a quarrel," and since the common-law privilege of reporting official proceedings did not extend to defendant's false statement made in reliance on a recorded police "hot line" dispatch received over a one-way telephone information system. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

In defamation action brought by a private citizen against newspaper, arising from the publication of an article which stated that plaintiff had shot his wife "during a quarrel," whereas in fact the shooting had been accidental, defendant's reliance on police "hot line" log as an official document to provide the basis for the official report privilege to a defamation action was misplaced and incorrect, as the log, representing the oral police communication

from which defendant composed its article, did not carry the dignity and authoritative weight of a record for which the common law sought to provide a reporting privilege. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

In general.

Mere fact that Fourth Amendment violation has occurred in an arrest does not create immunity from prosecution, deprive the trial court of jurisdiction, or require the exclusion of evidence acquired by lawful means, remote from the illegal detention. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

In context of a homicide case in which there is no complainant in usual sense of that term, statute requiring police department to keep general complaint files in which name and address of complainant is entered requires police to record similar information with respect to person who notifies them that crime may have been committed. D.C. Code 1961, § 4-134 and (1). *United States v. Ross*, 259 F. Supp. 388, 1966 U.S. Dist. LEXIS 7410 (D.D.C.1966).

Injunctions.

Issuance of preliminary injunction restraining District of Columbia police officials from disseminating police records that pertained to arrestees was proper where the injunction preserved the status quo and prevented immediate injury to the arrestees until such time as their suit for expungement of arrest records could be determined on the merits. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a, b). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Fact that all criminal proceedings in the District of Columbia Superior Court had come to an end did not moot arrestees' action for injunctive relief where there was live controversy as to whether District of Columbia police officials should be required to refund to the arrestees moneys that had been previously obtained through bail collateral forfeitures and there was live controversy as to whether arrest records should be expunged. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a, b), 23-581(a)(1)(B). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Jurisdiction.

Even in absence of federal question, allegation by arrestees of \$50,000 in controversy would have given District of Columbia federal courts "local" equity jurisdiction of arrestees'

action against District of Columbia official for injunctive relief with respect to prosecution of charges, bond collateral forfeitures and expungement of arrest records. D.C. Code § 11-501(4). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Case involving novel question of jurisdiction of District of Columbia Court of General Sessions to issue orders prohibiting the dissemination of arrest records, together with prime question of jurisdiction, the public importance and timeliness of judge's order, and hardship to District government, was one which was appropriate for use of extraordinary writ. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

District of Columbia Court of Appeals has appellate jurisdiction over final orders of the Court of General Sessions, and orders prohibiting dissemination of arrest records, placing an immediate restraint on public officials, are final and thus appealable, so that in the future mandamus and prohibition would be an inappropriate means of challenging the scope of such an order. D.C. Code § 11-741. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

Where evidence in action for injunction prohibiting arbitrary use by police of computer system containing records of outstanding warrants and traffic tickets, for declaratory judgment that police regulations permitting use of system were unconstitutional and for compensatory and punitive damages arising out of alleged misuse of computer system revealed that check through computer revealed that plaintiffs had outstanding warrants against them, that plaintiffs without protest paid amounts assessed for outstanding warrants and that plaintiffs who were arrested because of warrants did not suffer any physical injury or lengthy deprivation, allegations of misconduct on part of police were not so serious as to warrant claim for more than \$10,000; thus, federal court did not have jurisdiction. 18 U.S.C. § 1331(a). *Boraks v. Wilson*, 383 F. Supp. 195, 1974 U.S. Dist. LEXIS 7041 (1974).

Jurisdiction of trial court over graduate student who had been arrested in connection with civil disturbance at which he was innocently and unavoidably present, had posted collateral with police officer designated to act as clerk of court but had not been prosecuted due to lack of evidence and who sought to have arrest record expunged was provided by statute which allows police officers to be designated to act as clerk of court to accept collateral. D.C. Code §§ 23-610. *Irani v. District of Columbia*, 272 A.2d 849, 1971 D.C. App. LEXIS 268 (App. 1971).

Purpose.

Purpose of amendment to statute governing police records and requiring police department

to keep arrest books containing information concerning, inter alia, accused, offense and complainant was to insure that keeping of such records and their availability to public should be matters of law and not of administrative discretion. D.C. Code 1961, § 4-134 and (1, 4). *United States v. Ross*, 259 F. Supp. 388, 1966 U.S. Dist. LEXIS 7410 (D.D.C.1966).

Review.

Decision of the District of Columbia Court of Appeals that in view of statute which requires Washington police records to be preserved, courts sitting in the District of Columbia lack jurisdiction to order the expungement of police records was not binding upon the United States Court of Appeals for the District of Columbia circuit in action to redress violation of constitutional rights. D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Fact that statute which requires Washington police records to be preserved was enacted by Congress rather than by state legislature was not controlling on issue of applicability of the

"Erie" doctrine with respect to District of Columbia Court of Appeals decision interpreting the statute. D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

District court's ruling, in criminal case, denying defendant access to certain police records which he claimed were public records, and refusing to appoint private investigator, were not reviewable on petition for mandamus. D.C. Code 1961, §§ 4-134, 4-135; 18 U.S.C. § 3006A(e). *Ross v. Sirica*, 380 F.2d 557, 1967 U.S. App. LEXIS 7696 (C.A.D.C. 1967).

Lower court's attempt to treat a "proposed final order," which was not submitted until several months after entry of order expunging arrest record, as a motion for reconsideration was ineffective to extend 30-day period within which appeal could be taken from original order. D.C. Code SCR, Civil Rules 6(b), 59(e); D.C. Code Court of Appeals Rules, rule 4, subd. 2(a)(1, 2), (b)(1). *Irani v. District of Columbia*, 292 A.2d 804, 1972 D.C. App. LEXIS 412 (1972).

§ 5-113.02. Records — Criminal offenses.

(a) In addition to the records kept under § 5-113.01, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States Marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Council of the District of Columbia determines this section should not apply). The record shall show:

(1) The circumstances under which the individual came into the custody of the police or the United States Marshal;

(2) The charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) If he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) If his guilt or innocence is so determined, the judgment of the court;

(5) If he is convicted, the sentence imposed; and

(6) If, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Magistrate for the District, the Clerk of the District Court, the Clerk of the Superior Court of the District of Columbia, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Mayor of the District of Columbia considers necessary to enable the Metropolitan Police force to carry out this section.

(June 29, 1953, 67 Stat. 100, ch. 159, title III, § 302; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Environmental controls, smoking restrictions, fines and penalties, see § 7-1706.

Prior Codifications. — 1981 Ed., § 4-132. 1973 Ed., § 4-134a.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(99) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-113.03. Reports by other police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Mayor of the District of Columbia, of each offense reported to, and each arrest made by, any other police force operating in the District.

(June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303.)

Prior Codifications. — 1981 Ed., § 4-133. 1973 Ed., § 4-134b.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-113.04. Participation of District of Columbia Metropolitan Police Department in the National Crime Information System.

(a) *Dissemination of adult arrest records to law enforcement agents.* —

(1) Notwithstanding any other provision of law, the Metropolitan Police Department of the District of Columbia shall disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the Identification Division of the Federal Bureau of Investigation. Such dissemination shall be done without cost and without the authorization of the persons to whom such records relate.

(2) Any records disseminated under this section shall be used in a manner that complies with applicable federal law and regulations.

(b) *Definitions.* — For purposes of this section:

(1) The term “member of the court” shall include judges, prosecutors,

defense attorneys (with respect to the records of their client defendants), clerks of the court, and penal and probation officers.

(2) The term “law enforcement agent” shall include police officers and federal agents having the power to arrest.

(3) The term “unexpurgated adult arrest records” shall include arrest fingerprint cards.

(Dec. 12, 1989, 103 Stat. 1903, Pub. L. 101-223, § 7.)

Prior Codifications. — 1981 Ed., § 4-133.1.

§ 5-113.05. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under § 24-404, or the United States Board of Parole has authorized the release of a prisoner under § 24-406, it shall notify the Chief of Police of that fact as far in advance of the prisoner’s release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of 6 months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner’s release as possible.

(June 29, 1953, 67 Stat. 100, ch. 159, title III, § 304.)

Prior Codifications. — 1981 Ed., § 4-134. 1973 Ed., § 4-134c.

§ 5-113.06. Records open to public inspection.

(a) Except as provided in subsection (c) of this section, the records to be kept by paragraphs (1), (2), and (4) of § 5-113.01 shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person.

(b) The name, address, date of birth, occupation, and photograph of any person convicted of a violation of Chapter 27 of Title 22, shall be made available to the public upon written request, in exchange for a reasonable fee established by the Mayor or his or her designee.

(c)(1) Notwithstanding any other law, the Metropolitan Police Department shall not release or otherwise make available reports of motor vehicle accidents to any person prohibited from soliciting or procuring clients, patients, or customers pursuant to § 22-3225.14. This section does not prohibit an attorney retained by a person involved in an accident, or the agent of that attorney, from obtaining the report of that accident.

(2) In addition to any other requirements, a person requesting to inspect or copy a motor vehicle accident report within 21 days of the accident shall:

(A) Produce for inspection and copying a government-issued, photo identification; and

(B) Provide a signed statement that:

- (i) Identifies the requested report;
- (ii) Includes the printed name of the requestor; and
- (iii) Attests that the requestor is not prohibited from obtaining the report under paragraph (1) of this subsection.

(3) For each request to inspect or copy a motor vehicle accident report made within 21 days of the accident, the Metropolitan Police Department shall maintain for one year a copy of the requestor's photo identification and the statement provided pursuant to paragraph (2) of this subsection.

(R.S., D.C., § 389; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(13); Oct. 25, 1972, 86 Stat. 1108, Pub. L. 92-543, § 1; May 24, 1996, D.C. Law 11-130, § 2, 43 DCR 1570; July 25, 2006, D.C. Law 16-144, § 3, 53 DCR 2838.)

Prior Codifications. — 1981 Ed., § 4-135. 1973 Ed., § 4-135.

Effect of amendments. — D.C. Law 16-144, in subsec. (a), substituted "Except as provided in subsection (c) of this section, the records" for "The records"; and added subsec. (c).

Emergency legislation. — For temporary amendment of section, see § 2 of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

Legislative history of Law 11-130. — Law 11-130, the "Safe Streets Anti-Prostitution Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-439, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996,

respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-237 and transmitted to both Houses of Congress for its review. D.C. Law 11-130 became effective on May 24, 1996.

Legislative history of Law 16-144. — Law 16-144, the "White Collar Insurance Fraud Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-208 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 30, 2006, it was assigned Act No. 16-340 and transmitted to both Houses of Congress for its review. D.C. Law 16-144 became effective on July 25, 2006.

CASE NOTES

ANALYSIS

Arrest records.
Complaint files.
Freedom of Information Act.
Media reporting privilege.
Review.

Arrest records.

District of Columbia's "Duncan Ordinance" prohibited practice of metropolitan police department of routinely disseminating to Federal Bureau of Investigation, whether before conviction or after exoneration or both, arrest records which included not only arrestees' fingerprints but also data identifying persons arrested and information concerning details and surrounding circumstances of arrests, at least as long as FBI continued to redisseminate that data for other than law enforcement purposes and particularly for purposes of employment and li-

censing. District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 714(a), 87 Stat. 774; Reorganization Plan No. 3 of 1967, D.C. Code, Tit. 1, Appendix I; D.C. Code §§ 1-1501 et seq., 1-1507(a, c), 4-119, 4-134a, 4-135, 16-2333(a). *Utz v. Cullinane*, 520 F.2d 467, 1975 U.S. App. LEXIS 12491 (C.A.D.C. 1975).

Trial court did not abuse its discretion in denying defendant's motion to seal arrest records based on defendant's failure to file motion until four years after simple assault charge was dismissed for want of prosecution, where defendant failed to offer any justification for his failure to file motion within 120 day time limit. *Williams v. United States*, 816 A.2d 53, 2003 D.C. App. LEXIS 31 (2003).

Ordinance prohibiting disclosure of arrest records, standing alone, prohibited release of any arrest records where arrest did not lead to conviction. *Newspapers, Inc. v. Metropolitan*

Police Dep't, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Absent direct attack on any particular use made by law enforcement officials of arrest records, Court of Appeals had to assume, on review of proceedings in which relief from maintenance of arrest records was sought, that the arrest records had appropriate role in law enforcement. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Arrest records of arrestee who was arrested for murder that was discovered to have been suicide, arrestee who was arrested for failure to attend driving school but who had in fact attended it, and arrestee who was arrested for carrying pistol but who law enforcement officials conceded was wrong man, had no potential usefulness in assisting officials of criminal justice system or otherwise helping prevention of crime and apprehension of offenders, and thus such arrestees were entitled to equitable relief of court sealing the arrest records and entry of order explaining grounds for failure to prosecute. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

In proceedings seeking relief from maintenance of arrest records, arrestee, who was not prosecuted due to inability to locate prosecution witnesses, did not establish that his arrest was based on mistaken identity or that no crime had in fact been committed at time of his arrest, as required to be entitled to equitable relief. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Where movant for equitable relief from maintenance of record of arrest shows by clear and convincing evidence that he did not commit crime for which he was arrested or that no crime at all had been at that time committed, trial court shall order prosecutor to collect all records reflecting the arrest, except precinct book, wherever located and file them with the courts, and if the court subsequently is satisfied by appropriate affidavit that all extant records relating to such arrest are before it, the court should then seal such records; the trial court should also make findings of fact detailing basic facts of the arrest and postarrest occurrences and enter conclusion of law either that movant did not commit the crime or that no crime was committed, and such order may be properly authenticated and given to each movant for his future use. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Complaint files.

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep general complaint files in which name and residence of complainant was entered, and government was not required to produce it for inspection and

copying by defense which had already learned identity and residence of informant. D.C. Code 1961, §§ 4-134, 4-135. *United States v. Ross*, 259 F. Supp. 388, 1966 U.S. Dist. LEXIS 7410 (D.D.C.1966).

In view of fact that "general complaint file" required to be open to public inspection did not contain citizen complaints of police misconduct, but rather reports reflecting complaints of criminal offenses, statutory provision pertaining to general complaint files did not entitle defendant to inspect any "general complaints" against police officers, in prosecution arising from exchange of gunfire between officer and defendant, though such material might be susceptible to production by traditional subpoena. D.C. Code §§ 4-134(1), 4-135. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

Freedom of Information Act.

Ordinance promulgated by District of Columbia Board of Commissioners was not "statute" for purposes of Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute; Board did not possess authority to enact statutes. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Word "statute" as used in Freedom of Information Act exemption that shields records specifically excepted from disclosure by statute was intended to be used in its ordinary meaning and, thus, records of driver's arrest were not exempt from disclosure, despite existence of ordinance prohibiting disclosure of arrest records. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Media reporting privilege.

Department of Corrections (DOC) correctional officer employed by District of Columbia was a "public official," and she therefore was required to prove actual malice in her defamation action against the District, relating to statement in facility-created employee newsletter implying that the correctional officer had received her officer-in-charge position through a "connection." *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Statement in facility-created employee newsletter, implying that correctional officer employed by District of Columbia's Department of Corrections (DOC) had received her officer-in-charge position through a "connection," was not published with "actual malice," as element for a public official's defamation claim; author could have reasonably believed officer had a "connec-

tion,” based on her having gone hunting with member of employee assignment committee, their families having visited each other’s homes, and their children having been on an outing together, and based on her friendly relationship with another committee member. *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Failure of editor and publisher of facility-created employee newsletter to read the newsletter, before it was published with a statement implying that correctional officer employed by District of Columbia’s Department of Corrections (DOC) had received her officer-in-charge position through a “connection,” did not establish “actual malice,” as element for a public official’s defamation claim; editor and publisher testified they had not read the article because they were preoccupied with their other duties at the facility, publisher testified he was a “publisher in name only” who did not review materials submitted for publication, and editor believed the article containing the statement was a healthy discussion of a matter of public interest within the facility. *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Insofar as actual damages were alleged, the standard of care applicable to defendant newspaper’s defamation of plaintiff, a private individual, was negligence, unless a common-law privilege applied; however, no such privilege applied, since there was no “fair comment” privilege to print the falsehood that plaintiff had shot his wife “during a quarrel,” and since the common-law privilege of reporting official proceedings did not extend to defendant’s false statement made in reliance on a recorded police “hot line” dispatch received over a one-way telephone information system. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

In defamation action brought by a private citizen against newspaper, arising from the publication of an article which stated that plaintiff had shot his wife “during a quarrel,”

whereas in fact the shooting had been accidental, defendant’s reliance on police “hot line” log as an official document to provide the basis for the official report privilege to a defamation action was misplaced and incorrect, as the log, representing the oral police communication from which defendant composed its article, did not carry the dignity and authoritative weight of a record for which the common law sought to provide a reporting privilege. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

Mere inaccurate business records of some sort will not suffice to create an official record to which the reporting privilege, relative to defamation, will attach. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

Although newspaper, under the defamation privilege pertaining to “fair comment on matters of public interest,” was protected in reporting the true fact of plaintiff’s arrest in connection with the shooting death of his wife, and would have been protected, absent malice, in expressing an opinion relative to the arrest, there was no “fair comment” privilege to print the additional false fact of the existence of a quarrel at the time of the shooting. *Phillips v. Evening Star Newspaper Co.*, 424 A.2d 78, 1980 D.C. App. LEXIS 408 (1980), writ of certiorari denied by 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848, 1981 U.S. LEXIS 2118, 49 U.S.L.W. 3864 (1981).

Review.

District court’s ruling, in criminal case, denying defendant access to certain police records which he claimed were public records, and refusing to appoint private investigator, were not reviewable on petition for mandamus. D.C. Code 1961, §§ 4-134, 4-135; 18 U.S.C. § 3006A(e). *Ross v. Sirica*, 380 F.2d 557, 1967 U.S. App. LEXIS 7696 (C.A.D.C. 1967).

§ 5-113.07. Preservation and destruction of records.

All records of the Metropolitan Police Department shall be preserved, except that the Mayor, upon recommendation of the Chief of the Metropolitan Police Department and only pursuant to part B of this subchapter, may cause records which the Metropolitan Police Department considers to be obsolete or of no further value to be destroyed.

(R.S., D.C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(c); July 15, 2004, D.C. Law 15-174, § 302, 51

DCR 3677; Apr. 13, 2005, D.C. Law 15-354, § 88, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 24, 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 4-137. 1973 Ed., § 4-137.

Effect of amendments. — D.C. Law 15-174 rewrote the section which had read as follows: "All records of the Metropolitan Police force shall be preserved, except that the Mayor of the District of Columbia, upon recommendation of the Chief of Police, may cause records which it considers to be obsolete or of no further value to be destroyed."

D.C. Law 15-354 validated a previously made technical correction.

D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 15-174. — Law 15-174, the "Millicent Allewelt Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 6, 2004, and March 2, 2004, respectively. Signed by the Mayor on March 23, 2004, it was assigned Act No. 15-408 and transmitted to both Houses of Congress for its review. D.C. Law 15-174 became effective on July 15, 2004.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted

on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Arrest records, generally.
Construction and application.
Expungement of arrest records.
—In general.
—Injunction, expungement of arrest records.
—Jurisdiction, expungement of arrest records.
In general.
Mistake.
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Arrest records, generally.

Trial court did not abuse its discretion in denying defendant's motion to seal arrest records based on defendant's failure to file motion until four years after simple assault charge was dismissed for want of prosecution, where defendant failed to offer any justification for his failure to file motion within 120 day time limit. *Williams v. United States*, 816 A.2d 53, 2003 D.C. App. LEXIS 31 (2003).

Absent direct attack on any particular use made by law enforcement officials of arrest

records, Court of Appeals had to assume, on review of proceedings in which relief from maintenance of arrest records was sought, that the arrest records had appropriate role in law enforcement. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Arrest records of arrestee who was arrested for murder that was discovered to have been suicide, arrestee who was arrested for failure to attend driving school but who had in fact attended it, and arrestee who was arrested for carrying pistol but who law enforcement officials conceded was wrong man, had no potential usefulness in assisting officials of criminal justice system or otherwise helping prevention of crime and apprehension of offenders, and thus such arrestees were entitled to equitable relief of court sealing the arrest records and entry of order explaining grounds for failure to prosecute. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

In absence of governmental concession in

proceeding seeking relief from maintenance of arrest records, arrestee bears burden of proving that notation of arrest is erroneous; arrestee must prove that the arrest was based on mistaken identity or that no crime had in fact been committed at time of his arrest. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

In proceedings seeking relief from maintenance of arrest records, arrestee, who was not prosecuted due to inability to locate prosecution witnesses, did not establish that his arrest was based on mistaken identity or that no crime had in fact been committed at time of his arrest, as required to be entitled to equitable relief. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Where movant for equitable relief from maintenance of record of arrest shows by clear and convincing evidence that he did not commit crime for which he was arrested or that no crime at all had been at that time committed, trial court shall order prosecutor to collect all records reflecting the arrest, except precinct book, wherever located and file them with the courts, and if the court subsequently is satisfied by appropriate affidavit that all extant records relating to such arrest are before it, the court should then seal such records; the trial court should also make findings of fact detailing basic facts of the arrest and postarrest occurrences and enter conclusion of law either that movant did not commit the crime or that no crime was committed, and such order may be properly authenticated and given to each movant for his future use. *District of Columbia v. Hudson*, 404 A.2d 175, 1979 D.C. App. LEXIS 424 (1979).

Construction and application.

Statute governing preservation and destruction of metropolitan police force records relates to records required to be kept under statute requiring keeping, *inter alia*, of arrest books and to central criminal records required under another statute, as well as to records of receipt and disbursement of money posted by arrested persons as collateral, photographs and fingerprints. D.C. Code §§ 4-134(4), 4-134a, 4-137, 23-610. *Spock v. District of Columbia*, 283 A.2d 14, 1971 D.C. App. LEXIS 214 (1971).

Expungement of arrest records.

— In general.

The court may order the expungement of records, including arrest records, when that remedy is necessary and appropriate in order to preserve basic constitutional rights. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Expungement of local arrest records is appropriate remedy in the wake of police action in violation of constitutional rights. U.S. Const.

Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. U.S. Const. Amend. 4. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

District of Columbia statute which provides that Washington police records must be preserved did not preclude the federal courts from giving relief, to persons in the District of Columbia deprived of constitutional rights, that would be available to persons in the various states from the appropriate federal courts of those districts and did not preclude expungement of arrest records. U.S. Const. Amend. 4; D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Arrestees' action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clearcut federal controversy existed. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a, b). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

For the purpose of a request to seal an arrest record, when an arrest did not result in prosecution, the moving party must show by clear and convincing evidence that the crime for which he was arrested did not occur or that he did not commit it; and after trial, the moving party has the additional burden of establishing the existence of some other circumstance that would make it manifestly unjust to decline to seal the arrest record in question. *In re Meaden*, 902 A.2d 802, 2006 D.C. App. LEXIS 412 (2006).

— Injunction, expungement of arrest records.

Fact that all criminal proceedings in the District of Columbia Superior Court had come to an end did not moot arrestees' action for injunctive relief where there was live controversy as to whether District of Columbia police officials should be required to refund to the arrestees moneys that had been previously obtained through bail collateral forfeitures and there was live controversy as to whether arrest records should be expunged. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a,

b), 23-581(a)(1)(B). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Issuance of preliminary injunction restraining District of Columbia police officials from disseminating police records that pertained to arrestees was proper where the injunction preserved the status quo and prevented immediate injury to the arrestees until such time as their suit for expungement of arrest records could be determined on the merits. U.S. Const. Amends. 4-6; 18 U.S.C. § 1331; D.C. Code §§ 11-101 et seq., 11-923(b), 22-1107, 23-101(a, b). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

— **Jurisdiction, expungement of arrest records.**

Even in the absence of federal question, allegation by arrestees of \$50,000 in controversy would have given District of Columbia federal courts "local" equity jurisdiction of arrestees' action against District of Columbia official for injunctive relief with respect to prosecution of charges, bond collateral forfeitures and expungement of arrest records. D.C. Code § 11-501(4). *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

In general.

In the absence of specific statutory authority, destruction of metropolitan police department records could not be ordered. D.C. Code § 4-137. *Spock v. District of Columbia*, 283 A.2d 14, 1971 D.C. App. LEXIS 214 (1971).

Mistake.

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal

record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. D.C. Code §§ 4-134, 4-134a. *District of Columbia v. Sophia*, 306 A.2d 652, 1973 D.C. App. LEXIS 317 (1973).

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. D.C. Code §§ 4-134, 4-134a. *District of Columbia v. Sophia*, 306 A.2d 652, 1973 D.C. App. LEXIS 317 (1973).

Review.

Decision of the District of Columbia Court of Appeals that in view of statute which requires Washington police records to be preserved, courts sitting in the District of Columbia lack jurisdiction to order the expungement of police records was not binding upon the United States Court of Appeals for the District of Columbia circuit in action to redress violation of constitutional rights. D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

Fact that statute which requires Washington police records to be preserved was enacted by Congress rather than by state legislature was not controlling on issue of applicability of the "Erie" doctrine with respect to District of Columbia Court of Appeals decision interpreting the statute. D.C. Code § 4-137. *Sullivan v. Murphy*, 478 F.2d 938, 1973 U.S. App. LEXIS 10515 (C.A.D.C. 1973).

PART B.

PRESERVATION OF CRIME INVESTIGATION RECORDS — LAW ENFORCEMENT AGENCIES.

§ 5-113.31. **Definitions.**

For the purposes of this part, the term:

(1) "Biological material" means a sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, observable skin tissue, or hair which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime.

(2) "Case jacket" means the primary file for an investigation of a crime which contains all of the investigative reports, papers, and documents specific to the investigation, including notes, transcripts of interviews, witness statements, photos, and audio and video tapes.

(3)(A) “Closed investigation” means the investigation of a crime:

(i) In which the suspect or, in a case with multiple suspects, each of the suspects:

(I) Has been found or pled guilty and judgment has been entered;

(II) Has been found not guilty by reason of insanity;

(III) Has been found incompetent to stand trial and is not likely to regain competency before the expiration of the statute of limitations;

(IV) Is incarcerated and serving a sentence of either life without release or a term of years that is equivalent to life without release for a crime other than the crime being investigated; or

(V) Has died; or

(ii) In which the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia has declined prosecution on grounds that permanently eliminate all possibility of prosecution and has authorized the return of evidence to the rightful owner.

(B) A law enforcement agency shall consider a crime closed under subparagraph (A)(i)(IV) or (V) of this paragraph only if the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia has certified, for investigations under the prosecutorial jurisdiction of each, that there would be sufficient evidence to prosecute the suspect or suspects if the suspect or suspects were alive or not incarcerated, and declines prosecution on the grounds that the suspect or suspects are dead or incarcerated.

(4) “Crime scene examination case file” means the primary file for an investigation’s crime scene which contains investigative documents and reports; toxicology, DNA testing, and other forensic examination results; evidence reports; photographs; and other documents pertaining to the investigation.

(5) “DNA” means deoxyribonucleic acid.

(6) “DNA testing” means forensic DNA analysis of biological material.

(7) “Domestic partner” has the same meaning as contained in § 32-701(3).

(8) “Family” means:

(A) A homicide victim’s spouse, spouse’s parents, domestic partner, children, including biological, step, and adopted, grandchildren, parents, grandparents, stepparents, nieces, nephews, siblings, or half siblings;

(B) A person who is a survivor of a homicide victim and who was primarily dependent upon the victim for care and support at the time of the commission of the homicide, including a child of the victim born after the victim’s death; or

(C) A person who is a survivor of a homicide victim and upon whom the victim was primarily dependent for care and support at the time of the commission of the homicide.

(9) “Law enforcement agencies” means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency, with the exception of the Office of the Chief Medical Examiner, that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses.

The term “law enforcement agencies” shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to § 5-133.17, to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(10) “Open investigation” means the investigation of a crime other than those considered to be closed investigations as described in paragraph (3) of this section.

(11) “Records retention schedule” means a document listing all of the records originating in the Metropolitan Police Department, specifying series of records to be retained permanently, and authorizing on a continued basis the destruction of other series of records after a specified time period has elapsed.

(12) “Statute of limitations” means the time limitations imposed on actions for criminal violations pursuant to § 23-113.

(July 15, 2004, D.C. Law 15-174, § 101, 51 DCR 3677.)

Legislative history of Law 15-174. — Law 15-174, the “Millicent Allewelt Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January

6, 2004, and March 2, 2004, respectively. Signed by the Mayor on March 23, 2004, it was assigned Act No. 15-408 and transmitted to both Houses of Congress for its review. D.C. Law 15-174 became effective on July 15, 2004.

§ 5-113.32. Retention of records and preservation of evidence from open homicide, sexual assault, and violent crime investigations.

(a) In open homicide investigations, law enforcement agencies shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation for 65 years from the date the crime is first reported to the law enforcement agency.

(b) In open investigations of the following crimes, law enforcement agencies shall retain case jackets, crime scene examination case files, and any evidence collected during the course of the investigation for the length of each crime’s statute of limitations:

- (1) Assault with intent to kill;
- (2) Aggravated assault;
- (3) Assault on a police officer with a dangerous weapon;
- (4) Burglary;
- (5) Mayhem;
- (6) Malicious disfigurement;
- (7) Sexual abuse and sex offenses; and

(8) Any crime of violence, as that term is defined in section § 22-4501, that is committed while armed, as that term is described in § 22-4502.

(c) Evidence preserved pursuant to subsections (a) and (b) of this section shall be preserved in such a manner, including if necessary by refrigeration, as to maintain the ability to conduct forensic testing, including DNA testing.

(d) Law enforcement agencies shall not be required to preserve evidence pursuant to subsections (a) and (b) of this section that is of such a size, bulk,

or physical character as to render retention impracticable. If practicable, law enforcement agencies shall remove and preserve portions of evidence if such portions contain sufficient evidence to permit future DNA or other forensic testing. When it is not practicable to preserve evidence pursuant to this subsection, law enforcement agencies shall photograph the evidence before disposing of it. When it is not practicable to preserve evidence in its entirety but portions of it are preserved pursuant to this subsection, law enforcement agencies shall photograph the evidence:

(1) Prior to removing portions of the evidence; and

(2) After removing portions of the evidence and before disposing of it.

(e) Photographs of evidence created pursuant to subsection (d) of this section shall be retained in the crime scene examination case files of the corresponding investigation.

(f) In closed investigations of the following crimes, law enforcement agencies shall retain case jackets and crime scene examination case files for as long as evidence is preserved for those investigations pursuant to Chapter 41A of Title 22 [§ 22-4131 et seq.]:

(1) Homicides;

(2) Assault with intent to kill;

(3) Aggravated assault;

(4) Burglary;

(5) Assault on a police officer with a dangerous weapon;

(6) Mayhem;

(7) Malicious disfigurement;

(8) Sexual abuse and sex offenses; and

(9) Any crime of violence, as that term is defined in § 22-4501, that is committed while armed, as that term is described in § 22-4502.

(g) Case jackets, crime scene examination case files, and evidence from open and closed homicide investigations shall not, under any circumstance, be destroyed or disposed of without the written approval of the Chief or the Property Clerk of the Metropolitan Police Department and without prior written approval of the United States Attorney for the District of Columbia, for investigations under the prosecutorial jurisdiction of the United States Attorney, and the Corporation Counsel for the District of Columbia, for investigations under the prosecutorial jurisdiction of the Corporation Counsel.

(h) Nothing in this section shall prohibit law enforcement agencies from:

(1) Combining case jackets and crime scene examination files into one file;

(2) Destroying duplicative copies of a record or document; or

(3) Storing case jackets and crime scene investigation files electronically, so long as electronic storage will not compromise the admissibility of the records or documents.

(i) Nothing in this section shall be construed as a requirement that a law enforcement agency shall collect a particular item of evidence, in whole or in part.

(July 15, 2004, D.C. Law 15-174, § 102, 51 DCR 3677.)

Legislative history of Law 15-174. — For torical and Statutory notes following § 5-113.31.
legislative history of D.C. Law 15-174, see His-

§ 5-113.33. Penalties; private right of action.

(a) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence or records that are being preserved and retained in accordance with this part shall be subject to:

(1) Administrative sanctions, if the individual is an employee of the District of Columbia government, up to and including termination; and

(2) A fine of not more than \$5,000, imprisonment for not more than one year, or both.

(b) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence or records that are being preserved and retained in accordance with this part may be the subject of a civil action brought in the Superior Court of the District of Columbia by the family of a victim of homicide or by the victim of a crime enumerated in § 5-113.32(b) or (f). The civil action may be brought against the District of Columbia government employee or employees responsible, or against the District of Columbia if a pattern of violations of this section can be established.

(c) Subsection (b) of this section shall only apply to the willful or malicious destruction, alteration, concealment, or tampering with evidence or records that occurs on or after July 15, 2004.

(July 15, 2004, D.C. Law 15-174, § 103, 51 DCR 3677.)

Legislative history of Law 15-174. — For torical and Statutory notes following § 5-113.31.
legislative history of D.C. Law 15-174, see His-

§ 5-113.34. Records retention schedule.

The Metropolitan Police Department shall issue a records retention schedule, in the form of a general order, consistent with this part.

(July 15, 2004, D.C. Law 15-174, § 104, 51 DCR 3677.)

Legislative history of Law 15-174. — For torical and Statutory notes following § 5-113.31.
legislative history of D.C. Law 15-174, see His-

Subchapter VII-A. Demand for Proof of Insurance from Motorists.

§ 5-114.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Accident” means an untoward and unforeseen occurrence out of the maintenance or use of:

(A) A motor vehicle;

(B) A vehicle operated or designed for operation upon a highway by power other than muscular power with respect only to any pedestrian or any occupant of that vehicle other than the owner or operator of that vehicle; or

(C) Any other vehicle covered by the insurance coverage required by § 31-2406.

(2) “Insurance Identification Card” means a current document issued by an insurer as proof of insurance for a motor vehicle that lists the name of the insurer, the policy number, the name of the insured, the period of coverage for the insurance, and the make, model, and vehicle identification number.

(3) “Insurer” means any person, company, or professional association licensed in the District of Columbia that provides motor vehicle liability protection or any self-insurer.

(4) “Law enforcement officer” means any officer of the Metropolitan Police Department, whether salaried or reserve, or of any other law enforcement agency operating in the District of Columbia with which the Metropolitan Police Department has an agreement authorizing its officers to enforce the provisions of this subchapter.

(5) “Motor vehicle” means any device propelled by an internal-combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired. The term “motor vehicle” does not include traction engines used exclusively for drawing vehicles in fields, road rollers, vehicles propelled only upon rails and tracks, electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(6) “Operator” means a person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a motor vehicle being pushed or towed by a motor vehicle.

(7) “Owner” means any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or other authority or other entity having the property or title to a vehicle or bicycle used or operated in the District; any registrant of a vehicle used or operated in the District; or any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or authority or other entity in business or renting or leasing vehicles or bicycles to be used or operated in the District.

(8) “Proof of insurance” means a valid Insurance Identification Card for a District of Columbia resident or its equivalent for the resident of another state. Other documentation from an insurance company that constitutes reasonable proof of valid insurance being in effect shall be adequate evidence of proof of insurance.

(9) “Self-insurer” means any person having received a certificate of self-insurance issued by the Mayor pursuant to § 50-1301.79.

(June 8, 2006, D.C. Law 16-117, § 101, 53 DCR 2548.)

Legislative history of Law 16-117. — Law 16-117, the “Vehicle Insurance Enforcement Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-56 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 23, 2006, it was assigned Act No. 16-319 and transmitted to both Houses of Congress for its review. D.C. Law 16-117 became effective on June 8, 2006.

§ 5-114.02. Demand for proof of motor vehicle insurance.

(a) Except when circumstances related to safety, law enforcement, or emergency medical care make it impracticable to do so, a law enforcement officer shall demand proof of insurance from the operator of any motor vehicle that:

(1) Has been involved in a traffic accident to which the law enforcement officer has responded; or

(2) Has been lawfully stopped by the law enforcement officer.

(b)(1) The failure of the operator of a motor vehicle to present proof of insurance upon demand, in violation of § 31-2413(a)(7), shall create a rebuttable presumption that the motor vehicle is being operated without required insurance being in effect, in violation of § 31-2413(a)(3).

(2) If the operator of a motor vehicle is unable to present proof of insurance upon demand, the law enforcement officer shall issue notices of infraction for violations of § 31-2413(a)(3) and (a)(7).

(c) A law enforcement officer may not stop a motor vehicle solely for the purpose of demanding proof of insurance.

(June 8, 2006, D.C. Law 16-117, § 102, 53 DCR 2548.)

Legislative history of Law 16-117. — For D.C. Law 16-117, see notes following § 5-114.01.

§ 5-114.03. Inclusion of insurance information on traffic accident reports.

(a) A law enforcement officer responding to the scene of a motor vehicle accident and completing a traffic accident report shall note the following information on the traffic accident report:

(1) The insurer or provider of insurance for the operator of each motor vehicle involved in the accident; and

(2) The insurer or provider of insurance for each motor vehicle involved in the accident.

(b)(1) Except as provided in paragraph (2) of this subsection, within 90 days of June 8, 2006, the Metropolitan Police Department shall utilize traffic accident report forms that contain adequate space on the form to identify the name of the insurer or provider of insurance for each motorist and motor vehicle involved in a motor vehicle accident. The word “Insurance” shall appear adjacent to the space on the form provided for the required insurance information.

(2) Until the Metropolitan Police Department makes the form specified in paragraph (1) of this subsection available to officers, officers shall enter the insurance information required by subsection (a) of this section in the narrative section of the existing traffic accident report form known as a PD-10. Until the supply of existing PD-10 forms in the inventory of the Metropolitan Police Department are depleted, officers may enter the required insurance information in the narrative section of the PD-10.

(June 8, 2006, D.C. Law 16-117, § 103, 53 DCR 2548.)

Legislative history of Law 16-117. — For D.C. Law 16-117, see notes following § 5-114.01.

§ 5-114.04. Report on enforcement of compulsory insurance requirements.

(a) The Metropolitan Police Department shall annually publish and submit to the Council and to the Department of Insurance, Securities, and Banking a report on the effectiveness of enforcement of the requirements of compulsory motor vehicle insurance. The Mayor shall direct the appropriate agencies to provide the Metropolitan Police Department with the information needed to compile the report. The report shall include:

(1) Statistics regarding:

(A) The number of notices of infraction (“NOI”) issued for failure to produce proof of insurance upon demand, and the number of such NOIs subsequently dismissed; and

(B) The number of NOIs for failure to maintain the required insurance, and the number of such NOIs subsequently dismissed; and

(2) An evaluation of the effectiveness of enforcement, including any recommendations for improvements to enforcement of compliance with compulsory insurance requirements.

(b) The report shall be on a calendar-year basis and shall be transmitted to the Council and the Department of Insurance, Securities, and Banking by January 31st, with the first report due January 31, 2007.

(June 8, 2006, D.C. Law 16-117, § 104, 53 DCR 2548.)

Legislative history of Law 16-117. — For D.C. Law 16-117, see notes following § 5-114.01.

Subchapter VIII. Arrests.

§ 5-115.01. Limitation on period of questioning; advisement of rights; release uncharged; admissibility of confessions.

(a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed 3 hours immediately following his arrest. Such person shall be advised of and accorded his rights under applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

(b) Any statement, admission, or confession made by an arrested person within 3 hours immediately following his arrest shall not be excluded from evidence in the courts of the District of Columbia solely because of delay in presentment.

(Dec. 27, 1967, 81 Stat. 735, Pub. L. 90-226, title III, § 301.)

Prior Codifications. — 1981 Ed., § 4-140.

1973 Ed., § 4-140a.

* CASE NOTES

ANALYSIS

Class actions.
Construction with other laws.
Custody.
Delay.
Juveniles.
Review.
Stop and frisk.
Voluntariness of confession.
Waiver of Miranda rights.

Class actions.

Person cannot represent class of which he is not a member; accordingly, plaintiff who was not subjected to police procedures under statute relating to interrogation of arrested persons or under statute relating to admissibility of prearrest statements could not assert class action on behalf of class that had been subject of police action based upon such statutes. D.C. Code § 4-140a; 18 U.S.C. § 3501(a-c). *Long v. District of Columbia*, 469 F.2d 927, 1972 U.S. App. LEXIS 7658 (C.A.D.C. 1972).

Construction with other laws.

Statute providing that arrestee may be questioned for period not to exceed three hours immediately following arrest must be construed in harmony with statute providing that presence or absence of any of the statutory factors to be taken into consideration by judge need not be conclusive on issue of voluntariness of confession. D.C. Code 1981, §§ 4-140, 4-140(a); 18 U.S.C. § 3501. *Byrd v. United States*, 618 A.2d 596, 1992 D.C. App. LEXIS 353 (1992).

Custody.

Juvenile was “in custody,” for Miranda purposes, during the second portion of interview with police; officers told juvenile, immediately after resuming questioning of juvenile following a break, that he needed to tell them how the victim’s sexual assault occurred before they would let him go, the juvenile he was not free to leave, and the officers’ tone was confrontational and aggressive. In re J.F., 987 A.2d 1168, 2010 D.C. App. LEXIS 24 (2010).

Juvenile was not “in custody,” for Miranda purposes, during the first portion of interview with police; juvenile was not handcuffed, he traveled to the police station in an unmarked car with plainclothes officers, he was offered food and drink, he waited in the police station lobby prior to the interview, and the officers explicitly told juvenile that he was not under

arrest and was free to leave at any time. In re J.F., 987 A.2d 1168, 2010 D.C. App. LEXIS 24 (2010).

Defendant was not in custody for Miranda purposes when he was questioned by detectives at police station; defendant came to the police station of his own accord and chose to wait in an unguarded room in close proximity to a direct exit to the street for several hours before meeting with the detectives, and the detectives conversed with defendant in a polite manner, told him they were just gathering information, and gave him food, drink, and unrestricted bathroom access. *McFadden v. United States*, 945 A.2d 1203, 2008 D.C. App. LEXIS 118 (2008).

Delay.

Any delay of more than three hours between a suspect’s arrest and his confession is closely scrutinized when determining whether a confession was voluntary, but this by no means leads to an automatic finding of involuntariness if the circumstances, taken as a whole, support that the confession was voluntary. *Brisbon v. United States*, 957 A.2d 931, 2008 D.C. App. LEXIS 413 (2008).

Juveniles.

Evidence supported finding that juvenile’s confession to sexual assault was involuntary; juvenile was 14 years old, he had no prior experience with the criminal justice system, he was in a vulnerable mental condition because he had just been told of his sister’s death and had been in a foster home for the past three days, officers told juvenile that he would not be leaving the police station until he confessed to sexually assaulting his sister, and the majority of juvenile’s confession was comprised of details that juvenile had adopted from the officers’ suggestions. In re J.F., 987 A.2d 1168, 2010 D.C. App. LEXIS 24 (2010).

Statements made by juvenile during custodial interrogation require special caution; juvenile’s confession is admissible if voluntary and made after knowing and intelligent waiver of Miranda rights. U.S. Const. Amend. 5; Juvenile Rule 111. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Rule stating that juvenile’s voluntary statement, given after Miranda warnings, may be used against juvenile in government’s case in chief and only for impeachment if made without valid waiver does not negate separate protection afforded by rule prohibiting interviews

with juvenile in detention without presence or consent of juvenile's parents or attorney. Juvenile Rule 111; Rule 105(f) (1994). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Review.

In reviewing question of whether confession was voluntary, Court of Appeals must undertake its own independent review, insofar as this is a question of law and not just of fact, and must decide whether, under the totality of the circumstances, will of defendant was overborne in such a way as to render his confession the product of coercion, and in addition to examining statutory factors, must consider defendant's prior experience with the legal system, circumstances of questioning, and any allegation of coercion or trickery resulting in confession. 18 U.S.C. §§ 3501, 3501(b). Byrd v. United States, 618 A.2d 596, 1992 D.C. App. LEXIS 353 (1992).

Stop and frisk.

"Stop and frisk" which did not result in arrest or prosecution had no connection with statute relating to interrogation of arrested persons nor with statute relating to admissibility of prearrestment confessions sufficient to raise issue of constitutionality of such statutes so as to require convention of three-judge district court. D.C. Code § 4-140a; 18 U.S.C. § 3501(a-c). Long v. District of Columbia, 469 F.2d 927, 1972 U.S. App. LEXIS 7658 (C.A.D.C. 1972).

Fact that stated official policy with respect to "stop and frisk" situations might be within constitutional bounds would not preclude determination, from fact that officers customarily carried out unlawful stop and frisk, that police policy regarding investigatory confrontations was unlawful. Long v. District of Columbia, 469 F.2d 927, 1972 U.S. App. LEXIS 7658 (C.A.D.C. 1972).

Voluntariness of confession.

Finding that defendant's waiver of his rights prior to confession was voluntary was supported by evidence, including evidence that defendant was not under influence of drugs or alcohol and was not unduly tired when he gave statement, despite contention that he had only slept four or five hours night before and that he was suffering effects of recent drug use. Byrd v. United States, 618 A.2d 596, 1992 D.C. App. LEXIS 353 (1992).

Evidence was sufficient to sustain finding that defendant's confession was voluntary despite delay of some six hours between arrest and first interview and passage of about three more hours before detectives began to videotape confession, absent evidence that delay was either intended to coerce or actually had effect of coercing defendant's testimony. Byrd v.

United States, 618 A.2d 596, 1992 D.C. App. LEXIS 353 (1992).

Evidence supported determination that defendant knowingly and intelligently waived his rights on three separate occasions before confessing and that statement regarding robberies was voluntary. U.S. Const. Amend. 5; D.C. Code 1981, § 4-140; 18 U.S.C. § 3501. Bond v. United States, 614 A.2d 892, 1992 D.C. App. LEXIS 244 (1992).

Waiver of Miranda rights.

Defendant knowingly and voluntarily waived his Miranda rights before being questioned by police about murder; detective advised defendant of his rights from a "rights card," defendant read card and wrote the word "yes" following questions regarding whether he understood his rights, wished to answer questions, and was willing to answer questions without attorney present, defendant wrote his initials after each "yes" and signed card at bottom, defendant had prior experience in criminal justice system, and there was no evidence that defendant was coerced or tricked into signing rights card. Crawford v. United States, 932 A.2d 1147, 2007 D.C. App. LEXIS 577 (2007).

Defendant's waiver of Miranda rights prior to giving videotaped confession was voluntary; although defendant initially declined to waive his Miranda rights, he then indicated that "he wanted to talk about the case" and personally changed responses on his Miranda waiver card so that he could speak with the law enforcement officers. Outlaw v. United States, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

The three hours that elapsed between defendant's arrest and his videotaped confession did not transform his statement into an involuntary one, because defendant's waiver of Miranda rights was also a waiver of his Mallory right to presentment without unnecessary delay. Outlaw v. United States, 806 A.2d 1192, 2002 D.C. App. LEXIS 516 (2002).

Valid waiver of Miranda rights also constitutes waiver of right to prompt presentment before a court. Byrd v. United States, 618 A.2d 596, 1992 D.C. App. LEXIS 353 (1992).

Valid waiver of Miranda rights waived defendant's Mallory right to presentment without unnecessary delay such that 36-hour period between arrest and confession could not demonstrate that confession or waiver of rights was involuntary; confession was not rendered invalid by D.C. Code section authorizing questioning of arrestee for period not to exceed three hours immediately following arrest, since it was not intended to prohibit admissibility of statements made after three-hour period. D.C. Code 1981, § 4-140; 18 U.S.C. § 3501; Criminal Rule 5(a). Bond v. United States, 614 A.2d 892, 1992 D.C. App. LEXIS 244 (1992).

§ 5-115.02. Duty to make known; return notice.

Every case of arrest shall be made known within 6 hours thereafter to the lieutenant of police on duty in the precinct in which the arrest is made, by the person making the same; and it shall be the duty of the lieutenant within 12 hours after such notice, to make written return thereof, according to the rules and regulations of the Council of the District of Columbia, together with the name of the party arrested, the offense, the place of arrest, and the place of detention.

(R.S., D.C., § 399; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Prior Codifications. — 1981 Ed., § 4-141.
1973 Ed., § 4-142.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(100) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-115.03. Neglect to make for offense committed in presence.

If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District Jail or Penitentiary not exceeding 2 years, or by a fine not exceeding \$500. A member of the police force who deals with an individual in accordance with § 24-604(b) shall not be considered as having violated this section.

(R.S., D.C., § 400; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(b).)

Prior Codifications. — 1981 Ed., § 4-142. 1973 Ed., § 4-143.

CASE NOTES

ANALYSIS

In general.
Off-duty officers.
Probable cause.

In general.

Arrestee who claimed improper treatment by police officers did not have viable 1983 claim against District of Columbia arising from alleged absence of District policy on required officer action when fellow officers break the law;

District did have such policy, and, other than alleged facts underlying case, arrestee did not present evidence of incidents in which officers observed fellow officers breaking the law and did not take appropriate action. 42 U.S.C. § 1983. *Gregory v. District of Columbia*, 957 F. Supp. 299, 1997 U.S. Dist. LEXIS 4559 (1997).

Members of police force are held to be always on duty, and are required to take police action when crimes are committed in their presence; on-duty status is not governed by whether they

are in or out of uniform. *Lande v. Menage Ltd. Pshp.*, 702 A.2d 1259, 1997 D.C. App. LEXIS 269 (1997).

If police officer exceeds his authority in making arrest, party injured thereby is not without remedy. *Lande v. Menage Ltd. Pshp.*, 702 A.2d 1259, 1997 D.C. App. LEXIS 269 (1997).

Members of the District of Columbia police force are held to be always on duty, and are required to take police action when crimes are committed in their presence. D.C. Code 1981, § 4-142; D.C. Mun. Regs. title 6A, § 200.4. *District of Columbia v. Coleman*, 667 A.2d 811, 1995 D.C. App. LEXIS 216 (1995).

Off-duty officers.

Private entity which employs police officer during his off-duty hours is not liable for actions of officer in carrying out his public duty as police officer. *Lande v. Menage Ltd. Pshp.*, 702 A.2d 1259, 1997 D.C. App. LEXIS 269 (1997).

Off-duty police officers who became involved in altercation with nightclub patrons after stopping patron who attempted to leave premises with open beer bottle, which was violation of ordinance, were acting on their own as police

officers rather than as employees of nightclub, and thus, nightclub owner was not liable for actions of officers, even though one of officers was working at club off-duty; officers took their actions as law enforcement officers, and were exercising their own judgment about what to do as police officers. *Lande v. Menage Ltd. Pshp.*, 702 A.2d 1259, 1997 D.C. App. LEXIS 269 (1997).

Off-duty police officer acting as security guard for restaurant arrested customer pursuant to authority as officer, not as restaurant's agent or employee, and, thus, restaurant owner could not be liable on theory of false arrest or assault and battery since officer was required by statute and regulation to perform the act even while off duty. D.C. Code 1981, §§ 4-142, 22-3102. *Bauldock v. Davco Food, Inc.*, 622 A.2d 28, 1993 D.C. App. LEXIS 65 (1993).

Probable cause.

Probable cause for police to take action is viewed from perspective of arresting officer, not person who later challenges arrest. *Lande v. Menage Ltd. Pshp.*, 702 A.2d 1259, 1997 D.C. App. LEXIS 269 (1997).

§ 5-115.04. Legal assistance for police in wrongful arrest cases.

(a) In accordance with regulations prescribed by the Council of the District of Columbia, the Corporation Counsel of the District of Columbia shall represent any officer or member of the Metropolitan Police Department, if he so requests, in any civil action for damages resulting from an alleged wrongful arrest by such officer or member.

(b) If the Corporation Counsel fails or is unable to represent such officer or member when requested to do so, the Mayor of the District of Columbia shall compensate such officer or member for reasonable attorney's fees (as determined by the court) incurred by him in his defense of the action against him.

(July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title V, § 501.)

Prior Codifications. — 1981 Ed., § 4-143. 1973 Ed., § 4-143a.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

District of Columbia has statutory obligation to reimburse its police officers only for legal fees, and not for money damages, resulting

from their alleged wrongful arrests. D.C. Code 1981, § 4-143. *Gaines v. Walker*, 986 F.2d 1438, 1993 U.S. App. LEXIS 4270 (C.A.D.C. 1993).

Police officer did not have property interest in

representation or attorneys fees in wrongful death suit arising from off-duty shooting incident pursuant to statute providing for legal assistance for police officers in wrongful arrest

cases. D.C. Code 1981, § 4-143; U.S. Const. Amend. 5; 42 U.S.C. § 1983. *Hairston v. District of Columbia*, 638 F. Supp. 198, 1986 U.S. Dist. LEXIS 23658 (1986).

§ 5-115.05. Detention of witnesses.

The Mayor of the District of Columbia shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all judges in committing witnesses to have regard to the rules and regulations of the Council of the District of Columbia in reference to their detention.

(R.S., D.C., § 401; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Witnesses, material, detention and release, see § 23-1326.

Prior Codifications. — 1981 Ed., § 4-144. 1973 Ed., § 4-144.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(101) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-115.06. Gaming and bawdy houses and sale of lottery tickets — Arrest of persons; seizure of implements.

If any member of the police force, or if any 2 or more householders shall report in writing, under his or their signature, to the Chief of Police that there are good grounds, stating the same, for believing any house, room, or premises within the police district to be kept or used for any of the following purposes, namely: (1) as a common gaming house, common gaming room, or common gaming premises, for therein playing for wagers of money at any game of chance; (2) as a bawdy house, or as a house of prostitution, or for purposes of prostitution; (3) for lewd and obscene public amusement or entertainment; or (4) for the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the Chief of Police to authorize any member or members of the police force to enter the same, who shall forthwith arrest all persons there found offending against law, and seize all implements of gaming, or lottery tickets, or lottery policies, and convey any person so arrested before the proper court, and bring the articles so seized to the office of the Mayor of the District of Columbia.

(R.S., D.C., § 402; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Prostitution, houses of prostitution, and pandering, see § 22-2701.01 et seq.

Search warrants, see § 23-521 et seq.

Section references. — This section is referred to in § 5-115.07.

Prior Codifications. — 1981 Ed., § 4-145. 1973 Ed., § 4-145.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Where defendant, who had been under police observation, was observed entering rooming house where he had rented a room and one of police officers, without search warrant, opened window leading to landlady's room, climbed through and admitted other officers to the house, officer looked through transom, observed defendant and a guest as well as numbers slips, money and adding machines, and officers then arrested defendant and his guest and seized the machines, numbers slips and money, denial of defendant's motion for suppression of evidence and return of property to him was error, and convictions of both defendant and his guest for carrying on a lottery would be reversed.

D.C. Code 1940, §§ 22-1501, 22-1502, 22-1504; U.S. Const. Amend. 4. McDonald v. U.S., 69 S.Ct. 191, 1948 U.S. LEXIS 1456 (U.S. Dist. Col. 1948).

Where officers heard adding machines which they knew were frequently used in the numbers operation and saw defendants busily engaged in their lottery venture, the officers had adequate grounds for seeking a search warrant and inconvenience of officers and delay in preparing papers and getting before magistrate was not a justification for search without warrant. U.S. Const. Amend. 4. McDonald v. U.S., 69 S.Ct. 191, 1948 U.S. LEXIS 1456 (U.S. Dist. Col. 1948).

§ 5-115.07. Gaming and bawdy houses and sale of lottery tickets — Prosecution of persons; destruction of seized articles; closing of premises.

It shall be the duty of the Chief of Police to cause all persons arrested in pursuance of the provisions of § 5-115.06 to be rigorously prosecuted, the articles seized to be destroyed, and such room or house to be closed, and not again used for such unlawful purpose.

(R.S., D.C., § 403.)

Cross references. — Search warrants, disposition of property, see § 23-525.

Prior Codifications. — 1981 Ed., § 4-146. 1973 Ed., § 4-146.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

*Subchapter VIII-A. Electronic Recording Procedures.***§ 5-116.01. Procedures for electronic recording of interrogations.**

(a)(1) The Metropolitan Police Department shall electronically record, in their entirety, and to the greatest extent feasible, custodial interrogations of persons suspected of committing a crime of violence, as that term is defined in § 23-1331(4), when the interrogation takes place in Metropolitan Police Department interview rooms equipped with electronic recording equipment.

(2) The recording required by paragraph (1) of this subsection shall commence with the first contact between the suspect and law enforcement personnel once the suspect has been placed in the interview room and shall include all subsequent contacts between the suspect and law enforcement personnel in the interview room.

(3) Nothing in this subsection shall prevent the Metropolitan Police Department from recording the actions of the suspect while law enforcement personnel are not in the interview room.

(b) The recording required by subsection (a) of this section shall include the giving of any warnings as to rights required by law, the response of the suspect to such warnings, and the consent, if any, of the suspect to the interrogation. If the required warnings have been given prior to placing the suspect in the interview room, the suspect shall be asked to affirm that he was informed of and waived those rights.

(c)(1) If, after a suspect has been given the warnings as to rights required by law and voluntarily waived such rights, the suspect announces that the suspect will voluntarily speak with law enforcement personnel only on the express condition that the interrogation not be further recorded, the remainder of the interrogation need not be recorded. In such a case, the giving of any warnings, the suspect's response, the suspect's conditional consent, and all events preceding the conditional consent shall be recorded.

(2) Law enforcement personnel shall not expressly or implicitly encourage the suspect to give such conditional consent in lieu of a completely recorded interrogation.

(Apr. 13, 2005, D.C. Law 15-351, § 101, 52 DCR 2275.)

Legislative history of Law 15-351. — Law 15-351, the “Electronic Recording Procedures Act of 2004”, was introduced in Council and assigned Bill No. 15-1073 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December

7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 1, 2005, it was assigned Act No. 15-751 and transmitted to both Houses of Congress for its review. D.C. Law 15-351 became effective on April 13, 2005.

§ 5-116.02. Authority to establish additional procedures.

The Chief of Police may issue a General Order establishing additional procedures, not inconsistent with those prescribed in § 5-116.01, for the electronic recording of interrogations by the Metropolitan Police Department.

(Apr. 13, 2005, D.C. Law 15-351, § 102, 52 DCR 2275.)

Legislative history of Law 15-351. — For Law 15-351, see notes following § 5-116.01.

§ 5-116.03. Evidentiary presumption.

Any statement of a person accused of a criminal offence in the Superior Court of the District of Columbia that is obtained in violation of § 5-116.01 shall be subject to the rebuttable presumption that it is involuntary. This presumption may be overcome if the prosecution proves by clear and convincing evidence that the statement was voluntarily given.

(Feb. 1, 2005, D.C. Law 15-351, § 103, 52 DCR 2275.)

Legislative history of Law 15-351. — For Law 15-351, see notes following § 5-116.01.

Subchapter IX. Supervisory Power Over Certain Businesses.

§ 5-117.01. Generally. [Repealed].

Repealed.

(R.S., D.C., § 404; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Apr. 20, 1999, D.C. Law 12-261, § 1231, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 4-147. 1973 Ed., § 4-147.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced into Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-117.02. Examination of books and premises.

The Mayor of the District of Columbia may direct the Chief of Police to empower any member of the police force, whenever such member shall be in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker or his business premises, or the business premises of any licensed vender or dealer in secondhand merchandise, or intelligence office keeper, or auctioneer of watches and jewelry, or suspected private banking house, or other doubtful establishment.

(R.S., D.C., § 405; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — “Pawnbrokers” defined, see § 47-2884.01.

Pawnbrokers, examination of books or premises, see §§ 47-2884.07 and 47-2884.11.

Prior Codifications. — 1981 Ed., § 4-148. 1973 Ed., § 4-148.

Editor’s notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-117.03. Examination of property pledged to pawnbroker.

Any member of the police force, when thereto authorized in writing by the Chief of Police, and having in his possession a pawnbroker’s receipt or ticket, shall be allowed to examine the property purporting to be pawned or pledged, or deposited upon said receipt or ticket, in whosoever possession said property may be; but no such property shall be taken from the possessor thereof without due process or authority of law.

(R.S., D.C., § 406.)

Cross references. — Pawnbrokers “defined”, see § 47-2884.01.

Pawned or pledged property, search and seizure, see § 47-2884.11.

Prior Codifications. — 1981 Ed., § 4-149.

1973 Ed., § 4-149.

Editor’s notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

§ 5-117.04. Interference with police.

Any willful interference with the Chief of Police, or with any member of the police force, by any of the persons named in § 5-117.01 [repealed], while in official and due discharge of duty, shall be punishable as a misdemeanor.

(R.S., D.C., § 407.)

Prior Codifications. — 1981 Ed., § 4-150. 1973 Ed., § 4-150.

Editor’s notes. — Office of Major and Su-

perintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

CASE NOTES

Failure to obey police.

Street vendor arrested on charge of failing to obey police orders to relocate his vending stand was not entitled to question police witnesses about their allegedly malicious intent and fail-

ure to issue written warning of violations, since police had objective probable cause to make arrest. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119

S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

Valid arrest of street vendor for failing to obey police orders to relocate his vending stand, based on special game-day restrictions of which vendor had been orally notified, precluded false arrest claim of vendor who, according to his own testimony, knowingly refused to comply with lawful police orders. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

Police had objective probable cause to arrest

street vendor for failing to obey police orders to relocate his vending stand away from an entrance zone near auditorium, regardless of whether traffic sign marking entrance zone was properly located; by his own admission, vendor was operating vending stand in a designated entrance zone. D.C. Code 1981, § 23-581(a)(1); D.C.Mun.Reg. title 24, § 510.21. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

§ 5-117.05. False or fictitious reports to Metropolitan Police.

Except as provided in § 22-1319, whoever shall make or cause to be made to the Metropolitan Police force of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police force, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such information to be false, shall be punished by a fine of not exceeding \$300 or by imprisonment not exceeding 30 days.

(Dec. 27, 1967, 81 Stat. 739, Pub. L. 90-226, title VI, § 608; Oct. 17, 2002, D.C. Law 14-194, § 152, 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 4-151. 1973 Ed., § 4-150a.

Effect of amendments. — D.C. Law 14-194 substituted “Except as provided in § 22-1319, whoever” for “Whoever”.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned

Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

CASE NOTES

Construction and application.

Stop and frisk following information from anonymous tipster which described individual with a gun was supported by reasonable suspicion, where the tipster informed the police in person and subjected himself to ready identification, and potential criminal prosecution for giving false information, when he approached

the police in his car, and stated that he “just saw” individual, indicating that his knowledge was based upon firsthand observation, and where what the police themselves observed of suspect’s conduct was clearly suspicious, in that they observed him concealing himself behind fence in the parking lot of a closed restaurant and peering out toward the street at three

o'clock in the morning. *United States v. Thompson*, 234 F.3d 725, 2000 U.S. App. LEXIS 33573 (C.A.D.C. 2000), writ of certiorari denied by 532 U.S. 1000, 121 S. Ct. 1667, 149 L. Ed. 2d 648, 2001 U.S. LEXIS 3327, 69 U.S.L.W. 3686 (2001).

Under District of Columbia law, false reporting of a crime was not actionable in a civil tort proceeding; statute prohibiting false reporting of a crime defined a criminal offense and did not create a private right of action. *Rogers v. Johnson-Norman*, 466 F.Supp.2d 162, 2006 U.S. Dist. LEXIS 91637 (2006).

Informant's tip about drug sale was sufficient

to provide law enforcement officers with probable cause to arrest defendant for drug offense, even though defendant argued that informant was unable to say where on defendant's person drugs could be found; informant personally witnessed drug transaction, provided accurate information as to defendant's appearance, had opportunity to identify defendant before any search occurred, had long and reliable history of giving accurate information to officers, was employed, and was vulnerable to prosecution should his information have proved false. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Subchapter X. Property.

§ 5-119.01. Property Clerk office created; definitions.

(a) There shall be an office of the Metropolitan Police District known as the Office of the Property Clerk. The Property Clerk shall be a member of the Metropolitan Police force. The staff shall consist of civilians who are not members of the Metropolitan Police force, except that police officers may provide security for lost, stolen, or abandoned property held by the office.

(b) For purposes of §§ 5-119.02 through 5-119.10 and §§ 5-119.12 through 5-119.18:

(1) The term "lost property" means any personal property, tangible or intangible, except a motor vehicle, the owner of which is unknown and which has been casually or involuntarily parted with through negligence, carelessness, or inadvertence.

(2) The term "finder of lost property" means any person other than a public officer of the Metropolitan Police Department who has found lost property.

(R.S., D.C., § 408; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1; Mar. 5, 1981, D.C. Law 3-160, § 201, 27 DCR 5150; Sept. 9, 1989, D.C. Law 8-24, § 6(a), 36 DCR 4575; May 4, 1990, D.C. Law 8-118, § 2, 37 DCR 1736.)

Cross references. — Public or government held property, see § 41-112.

Section references. — This section is referred to in § 5-119.19.

Prior Codifications. — 1981 Ed., § 4-152. 1973 Ed., § 4-151.

Legislative history of Law 3-160. — Law 3-160, the "Uniform Disposition of Unclaimed Property Act of 1980," was introduced in Council and assigned Bill No. 3-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-287 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — Law

8-24, the "District of Columbia Abandoned and Junk Vehicle Removal Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-118. — Law 8-118, the "Abandoned Property Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-419, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Approved without the signature of the

Mayor on March 6, 1990, it was assigned Act No. 8-172 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of

authority under D.C. Law 8-24, the "D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989", see Mayor's Order 90-11, January 23, 1990.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

In its role as arm of United States in any criminal prosecution arising out of a violation of District of Columbia Code, police department holds seized property as agent for, and subject to the direction of, the trial court under whose authority it was seized. *Wilson v. United States*, 424 A.2d 130, 1980 D.C. App. LEXIS 412 (1980).

Jurisdiction.

District of Columbia's property clerk statute

was not intended to deprive local courts, much less a United States district court, of any of its substantive or ancillary jurisdiction. D.C. Code § 4-151 et seq. *United States v. Wright*, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Statute creating office of property clerk of metropolitan police district and prescribing procedure by which property that is lost, abandoned or proceeds of crime may be claimed by and returned to lawful owner did not divest superior court of jurisdiction to entertain motion for return of property after government "no papered" defendants' cases. D.C. Code 1973, § 4-151 et seq. *Alleyne v. United States*, 455 A.2d 887, 1983 D.C. App. LEXIS 294 (1983).

§ 5-119.02. Lost, stolen or abandoned property — Custody.

All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the Superior Court of the District of Columbia, or which shall come into such custody, shall be, by such member, or by order of the Court, given into the custody of the Property Clerk and kept by him, except that the custody of any abandoned vehicle shall be transferred to the Abandoned and Junk Vehicle Division of the Department of Public Works.

(R.S., D.C., § 409; Sept. 9, 1989, D.C. Law 8-24, § 6(b), 36 DCR 4575.)

Cross references. — Property found in custody of deceased, depositing of, see § 5-1408.

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-153. 1973 Ed., § 4-152.

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 5-119.02.

References in text. — The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by the Act of April 1, 1942, 56 Stat. 190,

ch. 207, § 1. The Act of July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia." The Act of July 29, 1970, Pub. L. 91-358, § 155(a), substituted "Superior Court of the District of Columbia" for "District of Columbia Court of General Sessions."

Delegation of Authority. — Delegation of authority under D.C. Law 8-24, the "D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989", see Mayor's Order 90-11, January 23, 1990.

CASE NOTES

ANALYSIS

Arrest.
In general.
Jurisdiction.
Review.

Rights to stolen property.
Search and seizure, generally.

Arrest.

Where Government admitted that police officer not only "took custody" of defendant on

sidewalk but "maintained custody" in returning defendant to his apartment, "arrest" was made on sidewalk, and, hence, officers' seizure of suitcase and rolls of coins from defendant's apartment without search warrant could not be justified as incident to arrest. U.S. Const. Amend. 4. U.S. v. Scott, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

Where there was probable cause to arrest defendant, sums of money which were taken from defendant's person as result of lawful search incident to the arrest were properly taken, and such evidence would not be suppressed. U.S. Const. Amend. 4. U.S. v. Scott, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

In general.

Billfold found by officer was presumably lost or abandoned property. D.C. Code 1940, § 4-152. Roseborough v. U.S., 86 A.2d 920, 1952 D.C. App. LEXIS 145 (Cr.App. 1952).

Jurisdiction.

Section of District of Columbia's property clerk statute relating to return of a defendant's property does not limit federal jurisdiction to cases in which defendant was acquitted. D.C. Code § 4-157. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

A federal district court has postconviction jurisdiction on motion to order return of property lawfully seized pursuant to a federal warrant. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Notwithstanding fact that District of Columbia was in possession of money which was lawfully seized pursuant to a federal warrant, federal district court had personal jurisdiction to order return of the money where indictments against owners of the property were dismissed with prejudice; money was held by District of Columbia as an agent for, and subject to ultimate direction of, federal district court, under authority of which process the money was seized. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Federal district court did not lack subject matter jurisdiction to order return of money lawfully seized pursuant to federal warrant where indictments against owners of property were dismissed with prejudice. D.C. Code § 4-151 et seq. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Statute creating office of property clerk of metropolitan police district and prescribing procedure by which property that is lost, abandoned or proceeds of crime may be claimed by and returned to lawful owner did not divest superior court of jurisdiction to entertain motion for return of property after government "no

papered" defendants' cases. D.C. Code 1973, § 4-151 et seq. Alleyne v. United States, 455 A.2d 887, 1983 D.C. App. LEXIS 294 (1983).

Review.

Government's petition for rehearing or in alternative for rehearing en banc was denied in case in which court had affirmed order of superior court granting motion to suppress, as evidence, television set and other property which had been seized from defendants while they were carrying same down the street about midnight one night after burglary had occurred in the area to knowledge of police officers. United States v. Pannell, 387 A.2d 736, 1978 D.C. App. LEXIS 474 (1978).

Rights to stolen property.

Seizure of property from someone is prima facie evidence of that person's entitlement to such property when such property is no longer needed by the Government, particularly when the seized property is money; unless there are serious reasons to doubt a person's right to the property seized from him, he need not come forward with additional evidence of ownership. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Generally, seized property, other than contraband, should be returned to its rightful owner once criminal proceedings have terminated. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Movants' prima facie showing of entitlement to money, which was lawfully seized in narcotics raid from person of one movant and from dresser of room in which both movants "stayed" and "used," following dismissal of indictments arising out of seizures was not rebutted by their statements that they lacked funds with which to retain counsel or by fact that narcotics and other money was found on premises, which fact did not establish that seized money was proceeds of crime; thus, movants would be entitled to return of such funds if Government could not present evidence sufficient to contradict movants' claims. United States v. Wright, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. Fed.Rules Crim.Proc. rule 41(e), 18 U.S.C.; D.C. Code 1951, §§ 4-151 to 4-158. U.S. v. Scott, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

Failure of police officers to retain stolen items, i.e., pouch, sandals, and watch, that had come into their possession, as required by statute, did not warrant imposition of sanctions, in robbery prosecution, as officers did not deliberately return items to victim in order to gain an advantage over the defense, there was nothing in the record to suggest that officers acted in bad faith, and absence of pouch, which had allegedly been broken during altercation between defendant and victim, and had been thrown away by victim, had no significant impact on outcome of case. *Rodriguez v. United States*, 915 A.2d 380, 2007 D.C. App. LEXIS 6 (2007).

Search and seizure, generally.

Though officers having lawfully entered may observe that entry does not give them the right to search and seize. *U.S. Const. Amend. 4. U.S. v. Scott*, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

The Fourth Amendment prohibits both unreasonable searches and unreasonable sei-

zures, and its protection extends to both houses and effects. *U.S. Const. Amend. 4. U.S. v. Scott*, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

Where officers observed open suitcase containing liquor bottles bearing same stamp number as bottles which had been stolen during robbery of restaurant and also rolls of coins similar to those taken in the robbery after lawful entry of defendant's apartment without warrant, discovery of the property did not create such an emergency as to justify seizure of the property without a warrant, since police could have obtained a warrant while protecting the property. *U.S. v. Scott*, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

A seizure of articles from defendant's apartment which would not have been legal except as "incident to an arrest" could not be made legal by returning defendant already under arrest to his apartment prior to taking him to police station. *U.S. Const. Amend. 4. U.S. v. Scott*, 149 F.Supp. 837, 1957 U.S. Dist. LEXIS 3943 (D.D.C.1957).

§ 5-119.03. Registration record.

All such property and money shall be particularly registered by the Property Clerk in a book kept for that purpose, which shall contain also a record of the names of the persons from whom such property or money was taken, the names of all claimants thereto, the place where found, the time of the seizure, the date of the receipt, the general circumstances connected therewith, and any final disposal of such property and money.

(R.S., D.C., § 410.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-154. 1973 Ed., § 4-153.

§ 5-119.04. Powers of notaries public.

The Property Clerk is vested with all the powers conferred by law upon notaries public in the District.

(R.S., D.C., § 411.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-155. 1973 Ed., § 4-154.

§ 5-119.05. Administration of oaths; certification of depositions.

The Property Clerk may administer oaths and certify depositions which may be necessary to establish the ownership of any property or money lost, abandoned, or returned to him under the directions of the Mayor of the District

of Columbia, including such property or money so returned which is alleged to have been feloniously obtained or to be the proceeds of crime.

(R.S., D.C., § 412; June 11, 1878, 20 Stat. 107, ch. 180, § 6; May 9, 1941, 55 Stat. 185, ch. 99, § 1.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.06, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-156. 1973 Ed., § 4-155.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-119.06. Property clerk — Return of property — General requirements; multiple claimants; immunity; property needed as evidence; notice to owner; disposition upon failure to claim.

(a) Upon satisfactory evidence of the ownership of property or money described in § 5-119.05 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(a-1) Seizure or impoundment of property by the Metropolitan Police Department from an individual is prima facie evidence of that person's ownership of the property. The prima facie evidence shall constitute a presumption of ownership by possession and in the absence of other evidence or claims of title, shall be satisfactory evidence of ownership.

(b) In the event 2 or more persons claim ownership of any such property or money, the Property Clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person to whom the property or money shall be delivered. At the time and place so designated the Property Clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the Property Clerk shall deliver the property or money to the person whom the Property Clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money to any person having a duly executed power of attorney from such

owner, his next of kin, or legal representative, upon the filing of such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(c) The Property Clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in §§ 5-119.14, 5-119.15, and 5-119.16 hereof, no property or money in the possession of the Property Clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held under the provisions of § 5-119.08 hereof; nor shall it be delivered within 1 year after the date of receipt of said property or money by the Property Clerk unless the United States Attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime.

(e) Whenever the owner of property in the custody of the Property Clerk has been notified by the Property Clerk, by registered or certified mail, to take possession of such property within 30 days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in § 5-119.10; provided, that if, in the opinion of the Property Clerk, such property has no salable value, and if within 30 days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the Property Clerk, such property shall be disposed of by destruction or otherwise, as the Council of the District of Columbia by regulation or order shall provide.

(R.S., D.C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1; June 29, 1953, 67 Stat. 101, ch. 159, § 306(a); Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 1; Mar. 16, 1985, D.C. Law 5-194, § 2, 32 DCR 1020.)

Cross references. — Actions, limitations, see § 12-301.

Alcoholic beverages and vehicles, contraband, seizure and forfeiture, see § 25-911.

Cigarettes, forfeiture and seizure, see § 47-2409.

Civil damages, authorization for recovery, see § 23-554.

Controlled substances, forfeiture, see §§ 48-903.04, 48-905.02, and 48-1104.

Gambling premises and property, see § 22-1705.

Hunting and fishing equipment, seizure and sale, see § 22-4330.

Milk containers, seizure, see § 36-125.

Motor vehicle fuels, contraband, seizure and forfeiture, see § 47-2320.

Plants or plant products, diseased or infested, inspections and seizure, see § 8-304.

Weapons, taking of dangerous articles, see § 22-4517.

Section references. — This section is referred to in §§ 5-119.01, 5-119.16, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-157.

1973 Ed., § 4-156.

Legislative history of Law 5-194. — Law 5-194, the "Metropolitan Police Department Presumption of Ownership from Possession Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-503, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-259 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(102) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Evidence, generally.
Hearing.
In general.
Jurisdiction.
Notice.
Powers of court.
Proof of ownership.

Evidence, generally.

Evidence in detinue action sustained finding that money, which was found in coin-operated locker at railroad station by locker company after locker had been in use in excess of 24 hours without additional deposit having been paid and which had been turned over to property clerk of police department, was not wrongfully detained by locker company and property clerk. D.C. Code 1961, §§ 4-115, 4-141, 4-156(a). *Lewis v. Aderholdt*, 203 A.2d 919, 1964 D.C. App. LEXIS 287 (App. 1964), writ of certiorari denied by 382 U.S. 872, 86 S. Ct. 111, 15 L. Ed. 2d 110, 1965 U.S. LEXIS 961 (1965).

Evidence concerning burglary of drug store at which plaintiff had recently worked was admissible in detinue action against locker company, which found money in railroad station locker, and property clerk of police department to whom money was turned over, since evidence was relevant and material to determination whether there was probable cause for suspecting that money found in locker was connected with burglary. D.C. Code 1961, §§ 4-115, 4-141, 4-156(a). *Lewis v. Aderholdt*, 203 A.2d 919, 1964 D.C. App. LEXIS 287 (App. 1964), writ of certiorari denied by 382 U.S. 872, 86 S. Ct. 111, 15 L. Ed. 2d 110, 1965 U.S. LEXIS 961 (1965).

Hearing.

Personal representative of deceased sister's estate, who twice wrote police department property clerk, followed by letter from her attorney, asserting her right to guns seized by police from her deceased sister's apartment, was entitled to hearing before property clerk regarding continued retention of guns notwithstanding fact that letters did not specifically request hearing. U.S.C. Const.Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-157, 16-3701, 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Although property clerk returned money in dispute to alleged victim of robbery prior to trial, and it was inappropriate, in the absence of special circumstances to return property to alleged victim before trial had been held and defendant had opportunity to seek its return, hearing on motion would require criminal trial judge in effect, to try what was essentially a civil action and consider entering judgment against one or more parties rather than simply ordering return of property, motion for return filed by defendant would be denied. D.C. Code 1981, §§ 4-158, 4-159; Criminal Rule 41(g). *Stevens v. United States*, 462 A.2d 1137, 1983 D.C. App. LEXIS 413 (1983).

In general.

Police department property clerk is required to return property to its owner unless property was feloniously obtained, is the proceeds of a crime, or is needed as evidence in the prosecution of a crime. D.C. Code § 4-156. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Jurisdiction.

In prosecution of defendant for possession of implements of a crime, based on possession of a marijuana smoking pipe, trial court had concurrent jurisdiction to rule on a postconviction motion for return of money seized at the time of defendant's arrest, as the statute providing for return of a defendant's property through the property clerk was not exclusive. D.C. Code § 4-151 et seq. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Although trial court had concurrent jurisdiction with property clerk to rule on a postconviction motion for return of defendant's money, which was seized at time of his arrest, the trial court could refrain from exercising its jurisdiction pending further proceedings before the property clerk, and require that such proceedings, once initiated, be pursued to finality, at which point they would become subject to de novo review in the trial court. D.C. Code § 4-151 et seq. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct.

1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Superior Court has jurisdiction after a criminal trial to rule on motion to return property which has been seized in connection with prosecution; Court's jurisdiction is concurrent with that of police property clerk under statute which is intended to authorize clerk to return property on application by a rightful claimant and to protect clerk from liability for mistakenly returning property to wrong person. D.C. Code §§ 4-151 et seq., 4-157. *Wilson v. United States*, 424 A.2d 130, 1980 D.C. App. LEXIS 412 (1980).

Superior Court had personal jurisdiction to rule on defendant's postconviction motion for return of money, which had been seized from him at time of his arrest, in light of fact that United States was before the Court and that, for purposes of such motion, the United States represented government of District of Columbia and its police. D.C. Code § 11-101 et seq. *Wilson v. United States*, 424 A.2d 130, 1980 D.C. App. LEXIS 412 (1980).

The statute giving police property clerk authority to conduct hearing for purpose of determining ownership of property coming into hands of police department does not confer force of a judgment upon clerk's determination, so as to deprive courts of jurisdiction to determine title to the property as between conflicting claims de novo. D.C. Code 1940, §§ 4-152, 4-156. *Carroll v. E. Heidenheimer, Inc.*, 44 A.2d 71, 1945 D.C. App. LEXIS 122 (Cr.App. 1945).

Notice.

Availability of various legal actions by claimant to seized property, through which personal representative of deceased sister's estate could have contested retention of alleged firearms found by police in sister's apartment, did not eliminate government's obligation to inform personal representative that property clerk intended, for specific reason, to retain property taken unless she invoked certain procedures to recover it. D.C. Code 1981, §§ 4-157, 16-3701, 22-3214 to 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Personal representative of her deceased sister's estate seeking to recover possession of alleged firearms seized from deceased sister's apartment by police was challenging accuracy of notice procedures themselves under District of Columbia law, rather than unauthorized negligent tortious act by District of Columbia officials, and thus adequately stated claim under § 1983. D.C. Code 1981, § 4-157 to 4-160, 22-3217; 42 U.S.C. § 1983. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Personal representative of deceased sister's estate, who demonstrated she was deprived of

her constitutional rights to due process by police department's failure to notify her of seizure of guns from deceased sister's apartment for specified reason and of her right to hearing to contest that seizure, could prove damages attributable solely to department's failure to give her proper notice, even if she were not entitled to return of items held. 42 U.S.C. § 1983; U.S. Const. Amends. 5, 14. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Claimant to guns seized from her deceased sister's apartment, who was acting as personal representative of sister's estate, was denied her constitutional right to due process when she was not informed of any statutory right to contest government's retention of seized items at a hearing before police department property clerk. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 6-2301 et seq. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

At a minimum, claimant to seized property was entitled to notice that certain property had been seized, that district sought to retain property pursuant to specified authority, and that claimant could take particular steps to challenge district's action. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 6-2301 et seq. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Powers of court.

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposition thereof. Fed. Rules Crim. Proc. rule 41(e), 18 U.S.C.; D.C. Code 1951, §§ 4-156, 15-306; 26 U.S.C. §§ 3670, 3671, 3672(b), 3678, 3690, 3692; 18 U.S.C. § 2410. *Welsh v. U.S.*, 220 F.2d 200, 1955 U.S. App. LEXIS 5209 (C.A.D.C. 1955).

Proof of ownership.

Where locker company, which maintained coin-operated lockers at railroad station, opened all lockers, which had been in use in excess of 24 hours, and for which additional deposit for extended use had not been made, and found \$2,500 in cash in one of the lockers, and money was turned over to property clerk of police department, claimant of money, who brought detinue action against locker company and property clerk had burden of proving ownership of money by preponderance of evidence. D.C. Code 1961, §§ 4-115, 4-141, 4-156(a). *Lewis v. Aderholdt*, 203 A.2d 919, 1964 D.C. App. LEXIS 287 (App. 1964), writ of certiorari denied by 382 U.S. 872, 86 S. Ct. 111, 15 L. Ed. 2d 110, 1965 U.S. LEXIS 961 (1965).

§ 5-119.07. Acquittal of accused.

Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought with such claimant and the person arrested before any court for trial, and the court shall be satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, said court may, in writing, order such property or money to be returned, and the Property Clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent, or clerk of such accused person.

(R.S., D.C., § 414.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-158. 1973 Ed., § 4-157.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Although property clerk returned money in dispute to alleged victim of robbery prior to trial, and it was inappropriate, in the absence of special circumstances to return property to alleged victim before trial had been held and defendant had opportunity to seek its return, hearing on motion would require criminal trial judge in effect, to try what was essentially a civil action and consider entering judgment against one or more parties rather than simply ordering return of property, motion for return filed by defendant would be denied. D.C. Code 1981, §§ 4-158, 4-159; Criminal Rule 41(g). *Stevens v. United States*, 462 A.2d 1137, 1983 D.C. App. LEXIS 413 (1983).

Where property has been returned to a person other than the accused before trial, it is inappropriate for trial court to entertain a motion for return of property ancillary to the

criminal proceeding; since money can no longer be returned by property clerk, accused would be asking not for an order directing return of money but, in effect, judgment of trial court that he is entitled to damages in the amount claimed. *Stevens v. United States*, 462 A.2d 1137, 1983 D.C. App. LEXIS 413 (1983).

Jurisdiction.

Section of District of Columbia's property clerk statute relating to return of a defendant's property does not limit federal jurisdiction to cases in which defendant was acquitted. D.C. Code § 4-157. *United States v. Wright*, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

Federal district court did not lack subject matter jurisdiction to order return of money lawfully seized pursuant to federal warrant where indictments against owners of property were dismissed with prejudice. D.C. Code § 4-151 et seq. *United States v. Wright*, 610 F.2d 930, 1979 U.S. App. LEXIS 12227 (C.A.D.C. 1979).

§ 5-119.08. Ownership claim by other than person arrested.

If any claim to the ownership of such property or money shall be made on oath before the court, by or in behalf of any other persons than the persons arrested, and the accused person shall be held for trial or examination, such property or money shall remain in the custody of the Property Clerk until the discharge or conviction of the persons accused.

(R.S., D.C., § 415.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-159. 1973 Ed., § 4-158.

§ 5-119.09. Property transmitted; deceased and incompetent persons; storage; fees; sale.

(a) All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons alleged to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the Property Clerk to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

(b)(1) Whenever any money or property of a deceased person of a value of less than \$1,000 coming into the custody of the Property Clerk shall remain in his custody for a period of 6 months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in § 5-119.10; provided, that prior to the disposition of such property of a deceased person it shall be the duty of the Property Clerk to ascertain whether there is pending in the court having probate jurisdiction any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the Property Clerk shall not dispose of such property until final disposition by the court of such petition; provided further, that in any case where the Property Clerk acquires actual knowledge that a petition for the appointment of a legal representative of such deceased person has been filed or is pending in a court outside of the District of Columbia, the Property Clerk shall not dispose of such property until final disposition by the court of such petition.

(2) Whenever any money or property of a deceased person shall be of a value of \$1,000 or more and shall have remained in the custody of the Property Clerk for at least 6 months, all records pertaining to the same shall be referred by the Property Clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent; provided, that upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs at law or next of kin of the decedent, as provided by law, shall be deposited into the registry of the court having probate jurisdiction, and upon the expiration of a period of 3 years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia; provided further, that if the administrator does not take possession of such property within 3 months from the date of his appointment, the Property Clerk may, after giving such administrator 30 days notice by registered or certified

mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

(c) Whenever the Property Clerk has custody of any property belonging to any person who has been adjudged of unsound mind and a committee has been appointed for such person but fails to take possession of the property of such person in the custody of the Property Clerk within 6 months from the date of such committee's appointment, the Property Clerk shall give such committee 60 days notice by registered or certified mail of his intention to sell such property at public auction or otherwise dispose of such property in accordance with law. If, upon the expiration of such 60 days notice, the committee has not taken custody of such property: (1) the Property Clerk is authorized to sell such property at public auction, and, after deducting the expenses of the sale, expenses incident to the maintenance and custody of such property, and any amounts due the District of Columbia for care and maintenance of the adjudicated patient, shall pay the remaining proceeds of the sale over to such committee; or (2) if in the opinion of the Property Clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Council of the District of Columbia shall, by regulation, or the Mayor of the District of Columbia shall, by order, determine.

(d)(1) The said Mayor is authorized, in his discretion, to store in any commercial warehouse or garage in the District of Columbia, or in or on any facility under the jurisdiction of the District of Columbia, any property coming into the custody of the Property Clerk pursuant to this chapter, including vehicles impounded by any officer or member of the Metropolitan Police force.

(2) The Mayor is authorized to fix, by regulation, the fees to be charged to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of and protecting such property and for the cost of storing such property in any commercial warehouse or garage, and whenever any such property is stored in or on any facility under the jurisdiction of the District of Columbia, the Mayor shall fix the storage fee in an amount reasonably estimated by him to be the value of the storage service rendered for each day during which such property is so stored, and to collect all such fees due and owing for such property before releasing such property to its owner or his legal representative; provided, that the Mayor is authorized, in his discretion, to waive the charging and collecting of such fees for property taken into custody as evidence, the proceeds of crime, or from persons supposed to be insane; provided further, that the Property Clerk is authorized to sell at public auction pursuant to subsection (b) of § 5-119.10 any property stored in a commercial garage or warehouse, when the storage charges for such property exceed 75% of its value as determined by the Property Clerk, regardless of the amount of time for which such property is required by other sections of this chapter to be held by the Property Clerk.

(3) Fees collected by reason of this section shall be deposited in the Treasury to the credit of the District of Columbia.

(R.S., D.C., § 416; May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49

Stat. 1158, ch. 121, § 1; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 2; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(a)(1).)

Section references. — This section is referred to in §§ 5-119.01, 5-119.10, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-160. 1973 Ed., § 4-159.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(103) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-119.10. Sale at public auction; motor vehicle with lien of record; disposition of proceeds from sale.

(a) With respect to all property (including money), except perishable property, animals, firearms and property of persons with mental illness, not otherwise disposed of in accordance with § 5-119.09, that shall remain in the custody of the Property Clerk for not less than 90 days without being claimed and repossessed, the Property Clerk shall:

(1) Publish or cause to be published in a newspaper of general circulation in the District, once a week for 2 consecutive weeks:

(A) A description of the property; and

(B) Notice that if such property is not claimed by the rightful owner within 45 days from the date of 1st publication, title to the property shall revert to the finder of lost property after deduction for the expenses of custody and publication, or to the District of Columbia in all other cases; and

(2) Post or cause to be posted in the Metropolitan Police Department headquarters, where public notices are commonly or usually posted, a copy of the notice published in the newspaper of general circulation in the District, and shall make a record of the date when such publication and the posting of the notices are made.

(b) If neither the rightful owner nor the finder appear to claim the lost property, title to such property shall transfer to the District government and the property may be retained by the Mayor for official government use or may be sold at public auction at such place and time as the Property Clerk may direct and in such a manner as to expose to the inspection of bidders all property so offered for sale. The Property Clerk needs not offer any property for sale if, in the Property Clerk's opinion, the probable cost of sale exceeds the value of the property.

(c) The purchaser at any sale conducted by the Property Clerk pursuant to this section shall receive title to the property purchased, free from all claims of the rightful owner or the finder of the property and all persons claiming through and under the rightful owner or the finder. The Property Clerk shall execute all documents necessary to complete the transfer of title.

(d) All proceeds from any sale under this section shall be deposited in the General Fund of the District government.

(e) Repealed.

(f)(1) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this section.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 4; Mar. 5, 1981, D.C. Law 3-160, § 202, 27 DCR 5150; Sept. 29, 1988, D.C. Law 7-164, § 2, 35 DCR 5739; Sept. 9, 1989, D.C. Law 8-24, § 6(c)-(e), 36 DCR 4575; Oct. 28, 2003, D.C. Law 15-35, § 13(a), 50 DCR 6579; Apr. 24, 2007, D.C. Law 16-305, § 16, 53 DCR 6198.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.06, 5-119.09, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-161. 1973 Ed., § 4-160.

Effect of amendments. — D.C. Law 15-35 repealed subsec. (e).

D.C. Law 16-305, in subsec. (a), substituted “persons with mental illness” for “insane persons”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(a) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(a) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 5-119.01.

Legislative history of Law 7-164. — Law 7-164, the “District of Columbia Forfeited Property Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-325, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 5-119.01.

Legislative history of Law 15-35. — Law 15-35, the “Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Act of 2003,” was introduced in Council and assigned Bill No. 15-78, which was referred to Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-113 and transmitted to both Houses of Congress for its review. D.C. Law 15-35 became effective on October 28, 2003.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006,” was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Delegation of Authority. — Delegation of authority under D.C. Law 8-24, the “D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989,” see Mayor’s Order 90-11, January 23, 1990.

Delegation of authority pursuant to D.C. Law 7-164, the “D.C. Forfeited Property Amendment Act of 1988,” see Mayor’s Order 90-71, May 10, 1990.

Editor’s notes. — Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: “This

act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable."

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: "Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation."

CASE NOTES

ANALYSIS

Advertisement.
Liens.
Sale proceeds.

Advertisement.

Statute providing that all property, except perishable property and animals that shall remain in custody of property clerk for six months, with exception of motor vehicles which shall be held for three months, without any lawful claimant thereto after having been three times advertised in some daily newspaper of general circulation in the District of Columbia, shall be sold at public auction, and proceeds of such sale having been retained by property clerk for three months without lawful claimant, shall be paid into policemen's fund, requires that advertisement contain a reasonably complete identification of the particular chattels such as to convey to one reading the advertisement sufficient information to enable him to recognize a chattel as his own, before commencing to count a limitation period against him. D.C. Code 1940, § 4-160. District of Columbia v. Hamilton Nat. Bank of Wash., 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

Where the only advertisement in newspaper concerning sale of abandoned automobile in which bank claimed an interest, was one stating that "27 motor vehicles" were to be sold at metropolitan police auction of abandoned property, limitations did not run against bank under statute providing that all property, except perishable property and animals that shall remain in custody of property clerk for six months, with exception of motor vehicles, which shall be held for three months without any lawful claimant thereto after having been three times advertised of some daily newspaper of general circulation published in District of Columbia, and proceeds of such sale having been retained by property clerk for three months without lawful claimant shall be paid into policemen's fund. D.C. Code 1940, § 4-160. District of Columbia v. Hamilton Nat. Bank of Wash., 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

Liens.

Where automobile seller agreed to record loan company's lien on title to automobile and deliver such title to loan company but seller failed to do so and buyer defaulted, and such

automobile was sold by the police department as an abandoned vehicle, in computing damages for breach of contract the value of lien was to be determined as of date of sale to borrower and not as of date borrower abandoned automobile. D.C. Code 1951, § 4-160. Logan Motor Co. v. Lenders, Inc., 125 A.2d 511, 1956 D.C. App. LEXIS 232 (Cr.App. 1956).

Sale proceeds.

When property in custody of police department is motor vehicle with liens of record, unclaimed by lienholder, sale proceeds are available for payment of liens as well as payments of sale and custody which, in effect, allows buyer to take free and clear of all liens of record. D.C. Code § 4-160(b). District of Columbia v. Franklin Inv. Co., 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Where buyer bought automobile from dealer under conditional sales contract reserving title in dealer "or assigns", and gave a note for unpaid balance of purchase price, and note and contract were transferred to finance company, and company then delivered them to bank with a "without recourse" endorsement on note, and buyer defaulted in payments on note and abandoned automobile which was sold at a metropolitan police auction of abandoned property, bank had sufficient title to maintain action against the District of Columbia to reach the proceeds of the sale of the automobile, though there had been no express written assignment of the contract and note. D.C. Code 1940, § 28-2503; Fed. Rules of Civ. Proc. rule 17, 18 U.S.C.; Civil Rules of Municipal Court for District of Columbia, rule 17. District of Columbia v. Hamilton Nat. Bank of Wash., 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

Where buyer bought automobile from dealer under conditional sales contract reserving title in dealer "or assigns", and gave a note for unpaid balance of purchase price, and note and contract were transferred to finance company, and company then delivered them to bank with a "without recourse" endorsement on note, and buyer defaulted in payments on note and abandoned automobile which was sold at a metropolitan police auction of abandoned property, and bank brought suit against the District of Columbia to reach the proceeds of the sale, the suit was for a liquidated claim, and therefore it was not necessary for bank to plead and prove

compliance with statute requiring that notice of claim for unliquidated damages be given to commissioners of District of Columbia within six months. D.C. Code 1940, § 12-208. *District of Columbia v. Hamilton Nat. Bank of Wash.*, 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

Where buyer bought automobile from dealer under conditional sales contract reserving title in dealer "or assigns", and gave a note for unpaid balance of purchase price, and note and contract were transferred to finance company, and company then delivered them to bank with a "without recourse" endorsement on note, and buyer defaulted in payments on note and abandoned automobile which was sold at a metropolitan police auction of abandoned property, and bank brought suit against the District of Columbia to reach proceeds of sale, it was incumbent on the District of Columbia to prove that claim was barred on ground that transaction was in violation of the Loan Shark Law. D.C. Code 1940, § 26-601. *District of Columbia*

v. Hamilton Nat. Bank of Wash., 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

Where buyer bought automobile from dealer under conditional sales contract reserving title in dealer "or assigns", and gave a note for unpaid balance of purchase price, and note and contract were transferred to finance company, and company then delivered them to bank with a "without recourse" endorsement on note, and buyer defaulted in payments on note and abandoned automobile which was sold at a metropolitan police auction of abandoned property, and bank brought suit against the District of Columbia to reach the proceeds of the sale, defense of the District of Columbia that claim was barred on ground that the transaction violated the Loan Shark Law was ineffectual, in absence of proof that bank had knowledge of any usurious taint to original transaction. D.C. Code 1940, § 26-601. *District of Columbia v. Hamilton Nat. Bank of Wash.*, 76 A.2d 60, 1950 D.C. App. LEXIS 176 (Cr.App. 1950).

§ 5-119.11. Immunity from damages to property; exception; "gross negligence" defined.

Neither the government of the District of Columbia nor any officer or employee thereof shall be liable for damage to any property resulting from the removal of such property from public space, or the transportation of such property into the custody of the Property Clerk, Metropolitan Police Department, nor for damage to any such property while such property is in the custody of the Property Clerk, Metropolitan Police Department, when such custody is maintained pursuant to the requirements of law, except that the government of the District of Columbia or any such officer or employee may be liable for damage to such property as a result of gross negligence in the removal, transportation, or storage of such property; provided, that should a judgment be entered for the District of Columbia against any commercial warehouseman or garagekeeper for damage to such property in his care, recovery on such judgment, less all administrative expenses and court costs to the District of Columbia involved in such litigation, shall be paid by the District of Columbia to the owner of the damaged property as determined by the Property Clerk. For the purpose of this section, the term "gross negligence" means a willful intent to injure property, or a reckless or wanton disregard of the rights of another in his property.

(Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 5.)

Section references. — This section is referred to in § 41-112.

Prior Codifications. — 1981 Ed., § 4-162. 1973 Ed., § 4-160a.

CASE NOTES

ANALYSIS

In general.
Vehicle towing.

In general.

If District Property Clerk, through its agents other than the United States Marshal's office would remove property which was subject to writ of restitution issued by court in order to clear sidewalk on which property was placed, it would be a proceeding that was part of city housekeeping responsibility and District would be liable for any damage done through negligence. *Wilson v. Bittinger*, 262 F.2d 714, 1958 U.S. App. LEXIS 3471 (C.A.D.C. 1958).

In action by leasehold tenant of apartment to recover damages from her landlord, his agent, and District of Columbia for negligence in execution of writ of restitution from Municipal Court for the District of Columbia, from allegations of complaint and facts before court which were given in support of defendants' motions for summary judgment, tenant was entitled to trial to show whether property was negligently damaged by defendant or any of them and if so to recover from any defendant who might be liable in law for its negligence or that of its servants for whom it is responsible. D.C. Code 1951, §§ 4-151 to 4-168, 4-156(c). *Wilson v. Bittinger*, 262 F.2d 714, 1958 U.S. App. LEXIS 3471 (C.A.D.C. 1958).

District of Columbia was not grossly negligent in securing detainee's property, which was stolen and destroyed by a property clerk, where clerk had exemplary service record before this incident, District followed all required procedures for storing property in custody of police department's property clerk, and District restricted access to locked property clerk's office to six experienced and responsible police officers. D.C. Code 1981, § 4-162. *Mefford v. District of Columbia*, 728 A.2d 607, 1999 D.C. App. LEXIS 86 (1999).

Statute making District of Columbia or any officer or employee thereof liable for gross negligence in storage of property in custody of police department's property clerk did not make District vicariously liable for gross negligence of its officers and employees. D.C. Code 1981, § 4-162. *Mefford v. District of Columbia*, 728 A.2d 607, 1999 D.C. App. LEXIS 86 (1999).

Bailee that receives compensation for services is held to standard of ordinary care. *First*

American Bank, N.A. v. District of Columbia, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

Bailee that takes possession of goods solely for benefit of owner is a "gratuitous bailee" and liable only for gross negligence, willful acts or fraud. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

Vehicle towing.

District of Columbia's having bank's illegally parked vehicle towed did not constitute a conversion inasmuch as District had authority to have vehicle towed. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

District of Columbia and towing company are held to standard of ordinary care when they tow and impound illegally-parked vehicles. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

Towing company's failure to follow certain procedures in towing of bank's illegally parked vehicle did not constitute gross negligence rendering it liable to bank when bank dispatch bag was found missing from impounded vehicle; even assuming that internal operating procedures could create standard of care, violation of procedures did not give rise to liability because procedures were not designed to prevent the sort of harm suffered by bank. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

Illegal parking of bank's vehicle by bank's employee did not constitute contributory negligence or assumption of the risk so as to bar bank's recovery from District of Columbia, which had vehicle towed, or towing company; initial illegal parking by bank's driver was too remote from ultimate result to have been proximate cause of loss of bank's dispatch bags while car was in impoundment. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

While there was no explicit agreement between bank and District of Columbia for safekeeping of illegally-parked bank vehicle which District had towed, District's impoundment of bank's vehicle involved mutual benefit so as to create quasi bailment for hire. *First American Bank, N.A. v. District of Columbia*, 583 A.2d 993, 1990 D.C. App. LEXIS 302 (1990).

§ 5-119.12. Sale of unclaimed animals.

Horses and other animals taken by the police and remaining unclaimed for 20 days may be advertised and sold upon 10 days public notice.

(R.S., D.C., § 418.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-163.
1973 Ed., § 4-161.

§ 5-119.13. Sale of perishable property.

All perishable property so taken and unclaimed shall be sold at once.

(R.S., D.C., § 419.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-164.
1973 Ed., § 4-162.

§ 5-119.14. Property delivered to owner preceding trial — Generally.

When animals or articles of property (except perishable property) other than money, returned to the Property Clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Mayor of the District of Columbia has power, in his discretion, to authorize the Property Clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within 1 year, when required for use in court as evidence in any proceedings thereon.

(R.S., D.C., § 420; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.06, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-165.
1973 Ed., § 4-163.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-119.15. Property delivered to owner preceding trial — Perishable property.

Perishable property, returned to the Property Clerk as the proceeds of crime, may be delivered to the owner on ample security being taken by the court for his appearance to prosecute the case.

(R.S., D.C., § 421.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.06, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-166. 1973 Ed., § 4-164.

§ 5-119.16. Property delivered to owner preceding trial — Large quantities of goods held for sale.

When large quantities of goods held for sale by the owner, come into the possession of the Property Clerk as the proceeds of crime, the same may be delivered to the owner, his heirs or representatives, as provided in § 5-119.06, upon ample security to prosecute the case. But in such cases goods to the estimated value of \$50 shall be retained by the Property Clerk until the discharge or conviction of the accused.

(R.S., D.C., § 422.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.06, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-167. 1973 Ed., § 4-165.

§ 5-119.17. Use of property as evidence.

If any property or money placed in the custody of the Property Clerk shall be desired as evidence in the Superior Court of the District of Columbia, such property shall be delivered to any officer who shall present an order to that effect from such Court; but such property shall not be retained in the Court, but shall be returned to the Property Clerk, to be disposed of according to the provisions of this chapter.

(R.S., D.C., § 423.)

Section references. — This section is referred to in §§ 5-119.01, 5-119.19, and 41-112.

Prior Codifications. — 1981 Ed., § 4-168. 1973 Ed., § 4-166.

References in text. — The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by the Act of April 1, 1942, 56 Stat. 190,

ch. 270, § 1. The Act of July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia." The Act of July 29, 1970, Pub. L. 91-358, § 155(a), substituted "Superior Court of the District of Columbia" for "District of Columbia Court of General Sessions."

§ 5-119.18. Property treated as abandoned.

Any property or money returned to the Property Clerk as the proceeds of crime, and which shall not be called for as evidence by any proceeding in the courts of the District within 1 year from the date of such return, may, unless specially claimed by the owner within that time, be thereafter treated as other unclaimed, abandoned, or lost property or money, as provided in this chapter.

(R.S., D.C., § 424.)

Cross references. — Disposition of unclaimed property, public or government held property, see § 41-112.

Section references. — This section is referred to in §§ 5-119.01 and 5-119.19.

Prior Codifications. — 1981 Ed., § 4-169.

1973 Ed., § 4-167.

§ 5-119.19. Abandoned intangible personal property.

Nothing in §§ 5-119.01 through 5-119.10 and 5-119.12 through 5-119.18 shall be held to require the Property Clerk to make disposition of any abandoned intangible personal property except as provided for in Chapter 1 of Title 41.

(Mar. 5, 1981, D.C. Law 3-160, § 203, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 4-170.

Legislative history of Law 3-160. — For torical and Statutory Notes following § 5-119.01.

legislative history of D.C. Law 3-160, see His-

Subchapter XI. Private Detectives.

§ 5-121.01. Bond required; conditions thereof; suits by injured parties.

The Council of the District of Columbia shall by regulation require that bonds in the amount of not more than \$25,000 shall be furnished and kept in force by all persons licensed as private detectives in the District of Columbia. Bonds required by this section shall be corporate bonds and shall run to the District and shall be conditioned upon the observance by the licensed private detective and any agent, employee, or person acting in behalf of the licensed private detective of all laws and regulations in force in the District of Columbia applicable to the conduct of persons licensed as private detectives. Such bonds shall be for the benefit of any person who may suffer damages as a result of violation of any law or regulation by or on the part of any licensed private detective or any agent, employee, or person acting on the behalf of any private detective. In addition to any right to any other legal action, any person aggrieved by the violation of any law or regulation by a licensed private detective may bring suit against the surety on a bond required by this section either alone or jointly with the principal thereon and recover damages for such violation of law or regulation in an amount not to exceed the penal amount of the bond. The provisions of paragraphs (2), (3), and (5) of subsection (b) of § 1-301.01 shall be applicable to each bond authorized by this section as if it were the bond authorized by paragraph (1) of such subsection (b); provided, that nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries.

(Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89-347, § 9(b).)

Prior Codifications. — 1981 Ed., § 4-171.

1973 Ed., § 4-171a.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(105) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-121.02. Duty in making arrest.

It shall be the duty of every person prosecuting the business of a private detective, who may arrest a person for crime, to bring the person arrested, with all evidence of the alleged crime, including property or money which may become evidence, immediately to the office of the Chief of Police, or to the proper court, where the case shall undergo an examination.

(R.S., D.C., § 429.)

Cross references. — “Detectives” defined and licensing of private detectives, see § 47-2839.

Prior Codifications. — 1981 Ed., § 4-172. 1973 Ed., § 4-172.

Editor’s notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

§ 5-121.03. Acting without compliance with law.

Any person practicing as a private detective or advertising or holding himself out as such without first complying with the provisions of law relative to private detectives shall be guilty of a misdemeanor and subject to a fine not exceeding \$500 or imprisonment in the District Jail for a period not exceeding 11 months and 29 days.

(Feb. 28, 1901, 31 Stat. 820, ch. 623, § 5.)

Cross references. — “Detectives” defined and licensing of private detectives, see § 47-2839.

Prior Codifications. — 1981 Ed., § 4-173. 1973 Ed., § 4-173.

§ 5-121.04. Applicable police provisions.

All laws which govern the police force in the matters of persons, property, or money shall be applicable to all private detectives (or to persons practicing as detectives, whatever other name they may assume) and such detectives or persons shall make like returns and dispositions of such matters as required by law and the rules of the Mayor governing the police force.

(R.S., D.C., § 430; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — “Detectives” defined and licensing of private detectives, see § 47-

Prior Codifications. — 1981 Ed., § 4-174. 1973 Ed., § 4-174.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-121.05. Compromise of felony; withholding information; receiving compensation from person arrested or liable to arrest; permitting escape.

It is unlawful for any private detective, or any member of the police force, or for any other person to compromise a felony or any other unlawful act, or to participate in, assent to, aid or assist any person suspected of crime to escape a full judicial examination by failing to give known facts or reasonable causes of suspicion, or withholding any information relative to the charge or suspicion from the proper judicial authorities; or in any manner to receive any money, property, favor, or other compensation from, or on account of, any person arrested or subject to arrest for any crime or supposed crime; or to permit any such person to go at large without due effort to secure an investigation of such supposed crime. And for any violation of the provisions of this section, or either of them, such member of the police force, or private detective, or other person guilty thereof, shall be deemed as having compromised a felony, and shall be thereafter prohibited from acting as an officer of said police force, or as a private detective, and shall be prosecuted to the extent of the law for aiding criminals to escape the ends of justice.

(R.S., D.C., § 431.)

Cross references. — Rewards for apprehension of fugitives, prohibition of policeman from receiving, see § 24-201.27.

Prior Codifications. — 1981 Ed., § 4-175. 1973 Ed., § 4-175.

CASE NOTES

ANALYSIS

In general.
Wrongful discharge.

In general.

On the whole record, including policeman's age, experience and position, issue of voluntariness of his confession which ultimately led to indictment for bribery which confession was made after superior read statutes regarding forfeiture of office or employment by District of Columbia employee who refuses to testify to matters relating to his office or employment was a factual one which, had it been decided in proper manner, would not necessarily have resulted in exclusion of the confession as evidence. 18 U.S.C. § 201; D.C. Code 1961, §§ 1-319, 4-175, 22-704; Fed.Rules Crim.Proc. rule 5(a), 18 U.S.C. *Hutcherson v.*

United States, 351 F.2d 748, 1965 U.S. App. LEXIS 5625 (C.A.D.C. 1965).

Wrongful discharge.

Special police officer who was employed by medical center stated wrongful discharge claim under public policy exception to the at-will employment doctrine; officer alleged that he recorded and reported center's alleged bribe of government official, that he assisted Federal Bureau of Investigation (FBI) in the investigation of corrupt influence with respect to a federal government construction grant, and that he was terminated after he informed center of pending arrests and his role in the investigation of the bribe. D.C. Code 1981, §§ 4-114, 4-142, 4-175, 22-704. *Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 1999 D.C. App. LEXIS 227 (1999).

Even if special police officer employed by

medical center initially engaged in conduct that violated District of Columbia's policies, that violation did not excuse center's like failure, itself an independent violation of public policy underlying the legal proscriptions, much less permit retaliatory discharge, and thus, officer who alleged that he reported center's alleged

bribe of government official and that he was subsequently terminated stated claim for wrongful discharge under public policy exception to the at-will employment doctrine. D.C. Code 1981, §§ 4-114, 4-142, 4-175, 22-704. *Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 1999 D.C. App. LEXIS 227 (1999).

Subchapter XII. General Prohibitions.

§ 5-123.01. Prohibitions; affiliation with organization advocating strikes; conspiracy to interfere with operation of police force by strike; notice of intention to resign.

(a) No member of the Metropolitan Police of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which, holds, claims, or uses the strike to enforce its demands. Upon sufficient proof to the Mayor of the District of Columbia that any member of the Metropolitan Police of the District of Columbia has violated the provisions of this section, it shall be the duty of the Mayor of the District of Columbia to immediately discharge such member from the service.

(b) Any member of the Metropolitan Police who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the police force in the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$300 or by imprisonment of not more than 6 months, or by both.

(c) No officer or member of the said police force, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the Mayor of the District of Columbia, unless he shall have given the Chief of Police 1 month's notice in writing of such intention.

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 223, ch. 3056; Dec. 5, 1919, 41 Stat. 364, ch. 1.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-121. 1973 Ed., § 4-125.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Discharge.
In general.
Jurisdiction.
Overbreadth.
Review.
Three-judge court.
Validity.

Discharge.

Where police officer was discharged because he advocated strike actions, and only lawful justification for firing, that officer put his own reputation for truthfulness in question by his public advocacy of a "sick-in" or "blue flu", was constructed after the fact, the discharge could not be sustained. U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

Judicial task in determining whether a public employee has been fired in violation of his First Amendment rights is to strike a balance between interest of employee in exercising his First Amendment rights and interest of state, as employer, in promoting efficiency of public services it performs through its employees. U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

Whenever a public employee has been discharged for exercise of his First Amendment rights, initial issue is whether there was, in fact, interference with efficiency of public services performed; where no such interference is shown, discharge cannot be sustained. U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

Fact that public employee is police officer is one factor to be considered in determining whether his discharge violates his First Amendment rights but such factor does not eliminate his First Amendment rights. U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

All public employees have the right not to be fired for reasons that infringe on First Amendment rights; even though they may be fired for many reasons, and probationary employees often for no reason at all, such employees may not be discharged merely for speaking out. U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

In general.

Where there was neither a strike nor a conspiracy, combination or agreement to engage in a strike or strike-like activity but, rather, there

was only probationary police officer's open advocacy of euphemistic "blue flu," which has become a metonym for a police bargaining tactic used to circumvent prohibitions against police strikes, officer's advocacy was not enough to bring his conduct within purview of statutory prohibition against conspiracies, combinations or agreements that have purpose of substantially interfering with or obstructing efficient conduct or operation of police force by strike or other disturbance so as to support his discharge. D.C. Code § 4-125; U.S. Const. Amend. 1. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

Where there was no satisfactory evidence that probationary police officer's statements advocating "blue flu" actually adversely affected departmental efficiency, his discharge could not be sustained on ground that his statements had potential for leading other officers to take view that "blue flu" or "sick-in" was appropriate course of action and had potential for leading to conspiracy to engage in blue flu or similar quasi-strike action. U.S. Const. Amend. 1; D.C. Code § 4-125. *Tygett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

District of Columbia would not be enjoined from enforcing unconstitutional statute prohibiting District of Columbia police officers from associating with groups which advocate strikes, where there was no indication that decision of three-judge district court would be ignored by the District of Columbia or by any other of the defendants, so that entry of a declaratory judgment would be a fully sufficient remedy. D.C. Code § 4-125. *Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

Jurisdiction.

Claim of plaintiff union and others that statute preventing policemen of the District of Columbia from affiliating with organizations which advocate strikes violated rights of free speech and association clearly "arises under the Constitution" within meaning of jurisdictional statute. 18 U.S.C. § 1331; D.C. Code § 4-125. *Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

Overbreadth.

The essence of the concept of "overbreadth" in a statute is that the challenged enactment includes within its probation both legal and illegal activity. *Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

Unique and special nature of policeman's obligation to serve the public justifies state control and prohibition of some activities in

which he would otherwise be free to engage, but a governmental purpose to control conduct constitutionally subject to state regulation may not be achieved by means which are unnecessarily broad. *Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

Review.

Any kind of reconstruction of reasoning behind discharge that provides employer with a post hoc justification for its action cannot be allowed in a case involving public employee's freedom of speech and thus it is essential that court reviewing discharge restrict its focus to reasons given by employer and not to reasons that may come to light if and when court rummages through record in effort to reconstruct basis on which employer might have decided matter. *U.S. Const. Amend. 1. Tygrett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

District of Columbia probationary police officer's discharge could not be sustained on basis of portion of District of Columbia antistrike ordinance which prohibited police officers from becoming member of any organization that holds, claims or uses strike to enforce its demands but which has been declared unconstitutional. *D.C. Code § 4-125. Tygrett v. Barry*, 627 F.2d 1279, 1980 U.S. App. LEXIS 19149 (C.A.D.C. 1980).

Three-judge court.

Three-judge court statute was properly invoked where complaints of plaintiffs formally alleged the basis for and specifically requested

preliminary and permanent injunctive relief against enforcement of statute prohibiting members of police department of the District of Columbia from affiliating with organizations which advocate strikes, where a substantial constitutional question was raised, and where District of Columbia statute was an "act of Congress" within meaning of three-judge court statute. *18 U.S.C. §§ 2281, 2282; D.C. Code § 4-125. Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

Validity.

Statute which prohibits District of Columbia police officers from engaging in fundamentally protected activity, that is from advocating, asserting or simply entertaining thoughts of achieving the right to strike against the District of Columbia, significantly infringed upon rights guaranteed a public employee by the First Amendment which were not counterbalanced by a compelling state interest. *U.S. Const. Amend. 1; D.C. Code § 4-125. Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

While there may be a legitimate interest in preventing strikes by public employees, and most especially by the police, the appropriate legislative solution is not one to destroy freedom of association; rather, it is to determine whether proposed concerted action actually endangers a valid state interest and, if so, to fashion precise legislation to protect the public. *Police Officers' Guild, etc. v. Washington*, 369 F. Supp. 543, 1973 U.S. Dist. LEXIS 10504 (1973).

§ 5-123.02. Use of unnecessary or wanton force.

Any officer who uses unnecessary and wanton severity in arresting or imprisoning any person shall be deemed guilty of assault and battery, and, upon conviction, punished therefor.

(R.S., D.C., § 434.)

Prior Codifications. — 1981 Ed., § 4-176.

1973 Ed., § 4-176.

CASE NOTES

ANALYSIS

Burden of proof.
Civil rights claims.
Complaint review board.
Contributory negligence.
Estoppel.
In general.
Instructions.
Pleadings.
Probable cause.
Questions for jury.

Reasonable force.
Review.

Burden of proof.

Fight participant, who was not arrested, did not establish negligence claim against police officer who used force to break up a fight between participant and another man because participant did not present a basis independent of excessive force to support his negligence claim and because participant failed to introduce expert testimony as to the applicable

standard of care. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Where fight participant, who was not arrested, introduced testimony and documentary evidence pertinent to the reasonableness of police use of force in restraining participant and breaking up a fight between participant and another man and applicable standards governing police restraint of an individual had been articulated in statutes and regulations and introduced as evidence at trial, participant was not required to present expert testimony in his action against police officer for battery. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

The proof requirements for assault and battery in cases involving allegations of excessive force by police officers are not the same as those for negligence cases concerning allegations of excessive police force, and this is so because for assault and battery the inquiry is whether the officer's conduct was reasonably necessary and thereby privileged and for negligence the inquiry is whether the officer's conduct violated the standard of care of a reasonably prudent police officer. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Negligence claims which do not allege or prove a distinct negligence ground apart from a claim of assault and battery by a District of Columbia police officer will fail because the plaintiff does not articulate elements of a negligence action and may not bootstrap from the battery proof alone, as one may not commit a negligent assault. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In order for a plaintiff to prevail in a negligence action based on a District of Columbia police officer's alleged use of excessive force, the plaintiff must prove the applicable standard of care, a deviation from that standard of care, and a causal relationship between that deviation and the plaintiff's injury. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In the case of assault and battery, a plaintiff who has been injured by a District of Columbia police officer can recover for assault by proving intentional and unlawful attempt or threat, either by words or acts, to do physical harm to the plaintiff, and for battery by proving an intentional act that causes harmful or offensive bodily contact. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Civil rights claims.

Arrestee who claimed improper treatment by police officers did not have viable 1983 claim against District of Columbia arising from alleged absence of District policy on required

officer action when fellow officers break the law; District did have such policy, and, other than alleged facts underlying case, arrestee did not present evidence of incidents in which officers observed fellow officers breaking the law and did not take appropriate action. 42 U.S.C. § 1983. *Gregory v. District of Columbia*, 957 F. Supp. 299, 1997 U.S. Dist. LEXIS 4559 (1997).

Causation existed in § 1983 claim against municipality alleging that municipality's system of disciplining police officers violated citizen's constitutional rights, where had municipality possessed functional system of discipline, police officer charged with excessive force would have been removed from service before incident between citizen and police officer since rule required police department to terminate probationary employees deemed unsatisfactory. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-106, 4-901 to 4-911, 4-903(b)(2), (c, d), 4-905(a), 4-909(e). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

District of Columbia's maintenance of patently inadequate system of investigation of excessive force complaints by civilians against police officers constituted "custom or practice of deliberate indifference" to rights of persons who came into contact with District police officers for purposes of municipal liability under § 1983; District of Columbia allowed known hazardous risk of failing to conduct timely investigations of allegations of police excessive force to continue over protracted period of time without taking significant steps to alleviate that known and obvious risk. 42 U.S.C. § 1983. *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

District of Columbia's chronic delays in investigating and resolving citizen complaints of excessive force by police officers, resulting in delayed discipline which, in practice, was functional equivalent of no discipline, was "policy," for which city could be held liable under § 1983, if policy amounted to deliberate indifference to rights of persons with whom police came into contact. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-901 to 4-911. *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Municipality's policy of delaying processing of citizens' complaints of excessive force by police officers through civilian complaint review board (CCRB) certainly permitted serious misconduct by police officers to go unchecked, and, in that sense, policy caused or was substantial factor in citizen's injuries resulting from excessive force used by police officer so as to render municipality liable under § 1983;

there clearly existed an inadequate system of discipline and municipality knew or should have known that system would cause injury. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-106, 4-901 to 4-911, 4-903(b)(2), (c, d), 4-905(a), 4-909(e). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Fight participant, who was not arrested, established §§ 1983 claim against police officer who used force to break up a fight between participant and another man; officer applied choke hold to participant in circumstances where non-lethal force was required and officer broke participant's jaw. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Complaint review board.

Fact that weapons review board may investigate complaint in which service weapon was used by police officer if brought to its attention did not divest civilian complaint review board (CCRB) of its obligation to investigate complaint of excessive force filed with CCRB. D.C. Code 1981, §§ 4-106, 4-176, 4-901 to 4-911, 4-903(b)(2), (d). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Civilian complaint review board's (CCRB) consistent and utter failure to abide by statutory deadlines for hearing cases brought by citizens involving excessive force complaints against police officers became "custom" of deliberate indifference to citizens' complaints of excessive force; although CCRB was mandated to schedule hearing within 30 days of citizen's complaint, that requirement was virtually ignored since promulgation. D.C. Code 1981, §§ 4-901 to 4-911, 4-903(c), 4-905(a). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Contributory negligence.

Under District of Columbia law, arrestee could bring negligence claim alongside assault and battery claims based on excessive force; arrestee pled negligence claim separately from his claims for assault and battery, negligence claim was based upon at least one factual scenario that presented aspect of negligence apart from use of excessive force itself, namely, that officer either intentionally or recklessly failed to lock handcuffs, and negligence claim was violative of distinct standard of care that required officers to ensure that handcuffs be double locked to prevent further closing of cuff. *Dormu v. District of Columbia*, 795

F.Supp.2d 7, 2011 U.S. Dist. LEXIS 61798 (2011).

Neither contributory negligence nor assumption of risk precluded recovery based on use of excessive force by police officer during arrest where both statute and police regulation prohibited officer from using excessive force. D.C. Code 1981, § 4-176. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

Estoppel.

Arrestee's conviction for criminal assault on police officer who shot him during the arrest did not collaterally estop him from claiming that police officer used excessive force. D.C. Code 1981, § 22-505. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

Although evaluation of severity of police response to juvenile's attack upon him was not at issue in juvenile proceedings charging juvenile with assaulting a police officer, where juvenile's court testimony was that he was wholly passive while officer struck him on legs with baton, forced him to kneel, and then used baton on his head and where juvenile court disbelieved juvenile and instead accepted officer's testimony and found that officer struck juvenile on the head in response to juvenile's attack, in order to prevent his escape from as yet unaccomplished custody, juvenile was bound by that finding and was judicially estopped to repudiate his own prior testimony under oath, adopt officer's testimony and embellish it in a way calculated to prove that officer responded too severely to juvenile's once-denied, now-admitted assault and attempted escape. *Lassiter v. District of Columbia*, 447 A.2d 456, 1982 D.C. App. LEXIS 378 (1982).

In general.

A police officer has a qualified privilege to use reasonable force to effect an arrest, provided that the means employed are not in excess of those which the actor reasonably believes to be necessary, and thus, if the officer does not use force beyond that which the officer reasonably believes is necessary, given the conditions apparent to the officer at the time of the arrest, he is clothed with privilege; otherwise, he has no defense to the battery, at least insofar as it involves the use of excessive force. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

A battery claim and a negligence claim, both involving allegations of excessive force by police officers, are separate theories of liability which must be presented individually and founded on appropriate evidence. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Where a police officer's use of excessive force is the product of a battery, an unwanted touching inherent in any arrest, which escalates in an unbroken manner into excessive force, the cause of action is a battery alone, with the privilege having ended at the point where excessive force began. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Liability for assault and battery or negligence from a District of Columbia police officer in effecting an arrest is imposed only for the harm done by the use of such force as was excessive, unless the harm cannot be differentiated. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

A police officer has a qualified privilege to use reasonable force to effect an arrest, provided that the means employed are not in excess of those which the actor reasonably believes to be necessary. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

An individual who has been injured by a District of Columbia police officer may sue under one or more common law theories of legal liability such as assault and battery or negligence. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In making an arrest, police officer is privileged even to use force unless means employed are in excess of those which officer reasonably believes to be necessary; this privilege to use reasonable force during arrest extends from time officer approaches and stops suspect to point when officer accomplishes custody. *Lassiter v. District of Columbia*, 447 A.2d 456, 1982 D.C. App. LEXIS 378 (1982).

Instructions.

A negligence instruction is justified by a police officer's application of excessive force if there is at least one distinct element, involving an independent breach of a standard of care beyond that of not using excessive force in making an arrest, which may properly be analyzed and considered by the jury on its own terms apart from the intentional tort of battery and the defense of privilege. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Pleadings.

Arrestee's allegations that police officer shot him while he fled out a window, and that such action violated police department general order prohibiting discharge of a weapon to stop an individual on mere suspicion of a crime simply because the individual runs away were insufficient to plead negligence per se under District of Columbia law, and therefore, arrestee failed to plead breach of a duty separate and apart from alleged intentional tort, as required for his negligence claims against officer and District of

Columbia. *Rice v. District of Columbia*, 715 F.Supp.2d 127, 2010 U.S. Dist. LEXIS 56057 (2010).

If, in a case involving the intentional use of force by District of Columbia police officers, a negligence count is to be submitted to a jury, that negligence must be distinctly pled and based upon at least one factual scenario that presents an aspect of negligence apart from the use of excessive force itself and violative of a distinct standard of care. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Motorist, who was allegedly beaten by police, failed to make a separate and distinct claim for negligence against District of Columbia apart from the battery allegations, precluding the negligence claim from going to jury, where crux of claim was that officers deliberately inflicted excessive force, and evidence was that officers continuously assaulted motorist without provocation; complaint alleged that officers committed negligence by violating statute prohibiting use of unnecessary or wanton force, were negligent in their excessive use of force, and knowingly and maliciously acted in manner that would cause injury to motorist's person. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In reviewing claims alleging negligence and/or assault and battery committed by a District of Columbia police officer, the court must look to the particular facts and circumstances of the case to properly characterize the action. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Usually an individual who has been injured by a District of Columbia police officer is able to satisfy technical requirements of pleading an assault and battery where there is no question that a battery occurred and the outcome of the case turns on the defense of privilege. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Amended complaint filed by citizen against District of Columbia, chief of police, and two police officers alleging that the officers "carelessly and negligently" arrested plaintiff, thereby fracturing his left arm, specified no negligent act, failed to characterize breach of duty which might have resulted in negligent liability, and thus did not raise a cognizable claim of negligence; the claim, therefore, was barred by limitation of actions applicable to intentional tort of assault and battery. D.C. Code § 12-301(4). *Maddox v. Bano*, 422 A.2d 763, 1980 D.C. App. LEXIS 381 (1980).

Probable cause.

Probable cause is defense to assault and battery in connection with arrest so long as force used to make arrest is reasonable. *Joyce v. United States*, 795 F. Supp. 1, 1992 U.S. Dist.

LEXIS 3937 (1992), affirmed without opinion by 986 F.2d 546, 300 U.S. App. D.C. 83, 1993 U.S. App. LEXIS 9186 (1993).

Person arrested could not prevail on civil claim for assault and battery since probable cause existed to make arrest and force used by officers was not excessive. *Joyce v. United States*, 795 F. Supp. 1, 1992 U.S. Dist. LEXIS 3937 (1992), affirmed without opinion by 986 F.2d 546, 300 U.S. App. D.C. 83, 1993 U.S. App. LEXIS 9186 (1993).

Questions for jury.

Where there is sufficient evidence to submit to a jury the question of assault and battery arising from a District of Columbia police officer's use of excessive force, there may be, on the facts of a particular case, sufficient evidence to submit the question of negligence as well. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Both negligence and battery claims, in order to go to the jury, must be separate and distinct from each other, even though related, and each of the two counts involving a police officer must be supported by the necessary evidence. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Where there is sufficient evidence to submit to a jury the question of assault and battery, that is, where a reasonable jury could conclude that excessive force was used by a District of Columbia police officer, there may be, on the facts of a particular case, sufficient evidence to submit the question of negligence as well, as both issues involve an inquiry into the reasonableness of the police officer's actions; for assault and battery the inquiry is whether the officer's conduct was reasonably necessary and thereby privileged, and for negligence the inquiry is whether the officer's conduct violated the standard of care of a reasonably prudent police officer. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In civil assault action against police, question whether force used was reasonable or excessive is typically for jury, absent preclusion judgment against plaintiff. *Lassiter v. District of Columbia*, 447 A.2d 456, 1982 D.C. App. LEXIS 378 (1982).

Whether decedent's death resulted from negligence by police detective in using excessive force under the circumstances was question for jury in suit brought by decedent's wife and two minor children against the District of Columbia under the Wrongful Death Act and survival statute. D.C. Code 1973, §§ 11-921, 12-101, 16-2701. *District of Columbia v. White*, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

Reasonable force.

Under District of Columbia law, a police officer has a qualified privilege to use reason-

able force to effect an arrest, provided that the means employed are not in excess of those which the actor reasonably believes to be necessary; accordingly, an officer may defend a claim of assault by proof that only reasonable force was used to maintain the arrest and that the arrest was made in good faith, with probable cause, under a statute he reasonably believed to be valid. *Pointer v. District of Columbia*, 736 F.Supp.2d 2, 2010 U.S. Dist. LEXIS 92517 (2010).

Assault and battery cases turn on whether the officer's conduct was reasonably necessary and thereby privileged. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Strictly speaking, a District of Columbia police officer effecting an arrest commits a battery; if the officer does not use force beyond that which the officer reasonably believes is necessary, given the conditions apparent to the officer at the time of the arrest, he is clothed with privilege, but otherwise, he has no defense to the battery, at least insofar as it involves the use of excessive force. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

A police officer has a qualified privilege to use reasonable force to effect an arrest, provided that the means employed are not in excess of those which the actor reasonably believes to be necessary. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

The reasonableness of a particular act of force must be judged from the perspective of a reasonable District of Columbia police officer on the scene, rather than with the 20-20 vision of hindsight in order to impose liability for assault and battery or negligence. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

Review.

Improper inclusion of negligence count in suit against District of Columbia for officer's alleged use of excessive force warranted vacation of judgment entered on jury verdict finding District liable for negligence, but not liable for assault and battery, and remand for new trial on the assault and battery count alone, considering presence in case law of language which could understandably have led motorist to seek inclusion of negligence count and the trial court to have given the negligence instruction, and the possibility of jury confusion that may have resulted therefrom. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

In reviewing claims of excessive force by a District of Columbia police officer, neither the trial court nor the appellate court is bound by a plaintiff's characterization of the action as alleging negligence and/or assault and battery.

District of Columbia v. Chinn, 839 A.2d 701,
2003 D.C. App. LEXIS 754 (2003).

Subchapter XIII. Limitation on Chokehold.

§ 5-125.01. Intent of Council. . .

The Council of the District of Columbia finds and declares that the use of restraints generally known as chokeholds by law enforcement officers constitutes the use of lethal force, and that the unrestricted use of force presents an unnecessary danger to the public. These conclusions are based upon the testimony presented at the police oversight hearing conducted by the Committee on the Judiciary on February 23, 1984. During the hearing, statistics were revealed indicating that there have been 2 civilian deaths in as many years caused by an officer's use of the chokehold. Therefore, it is the intent of the Council in the enactment of this subchapter to specify the circumstances and procedures under which these restraints shall be permitted and to classify the chokehold as a service weapon.

(Jan. 25, 1986, D.C. Law 6-77, § 2, 32 DCR 6497.)

Prior Codifications. — 1981 Ed., § 4-188.

Legislative history of Law 6-77. — Law 6-77, the "Limitation on the Use of the Chokehold Act of 1985," was introduced in Council and assigned Bill No. 6-15, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 8, 1985, and October 22, 1985, respectively. Signed by the Mayor on November

4, 1985, it was assigned Act No. 6-100 and transmitted to both Houses of Congress for its review.

Editor's notes. — Mayor authorized to issue rules: Section 5 of D.C. Law 6-77 provided that the Mayor may issue rules to implement the provisions of the act pursuant to subchapter I of Chapter 15 of Title 1.

§ 5-125.02. Definitions.

For the purposes of this subchapter, the term:

(1) A "trachea hold," "arm bar hold," or "bar-arm hold" means any weaponless technique or any technique using the officer's arm, a long or short police baton, or a flashlight or other firm object that attempts to control or disable a person by applying force or pressure against the trachea, windpipe, or the frontal area of the neck with the purpose or intent of controlling a person's movement or rendering a person unconscious by blocking the passage of air through the windpipe.

(2) A "carotid artery hold," "sleeper hold," or "v hold" means any weaponless technique which is applied in an effort to control or disable a person by applying pressure or force to the carotid artery or the jugular vein or the sides of the neck with the intent or purpose of controlling a person's movement or rendering a person unconscious by constricting the flow of blood to and from the brain.

(Jan. 25, 1986, D.C. Law 6-77, § 3, 32 DCR 6497.)

Section references. — This section is referred to in § 5-302.

Prior Codifications. — 1981 Ed., § 4-189.
Legislative history of Law 6-77. — For

legislative history of D.C. Law 6-77, see Historical and Statutory Notes following § 5-125.01.

rules: See Historical and Statutory Notes following § 5-125.01.

Editor's notes. — Mayor authorized to issue

§ 5-125.03. Trachea hold prohibited; carotid artery hold restricted.

(a) The use of the trachea hold by any police officer shall be prohibited under any circumstances and the carotid artery hold shall be prohibited except under those circumstances and conditions under which the use of lethal force is necessary to protect the life of a civilian or a law enforcement officer, and has been effected to control or subdue an individual, and the Metropolitan Police Department has issued procedures and policies which require, at a minimum, all the following:

(1) That an officer shall have satisfactorily completed a course of training on the carotid artery hold;

(2) That the officer who has applied the carotid hold on an individual render that person immediate first aid and emergency medical treatment if the person becomes unconscious as a result of the hold pending immediate transport of the person to the hospital;

(3) That upon resuscitation of the unconscious person, the individual shall be transported immediately to an emergency medical facility for examination, treatment, and observation by a competent and qualified emergency medical technician or physician within a reasonable period of time not to exceed 1 hour; and

(4) That where the person rendered unconscious through the use of a hold is unconscious for a period of 3 minutes or more, or appears to be under the influence of alcohol or drugs, or has shown signs of acute mental disturbance, that person shall be immediately transported to an emergency medical or acute care facility for examination, treatment, or observation by competent and qualified medical personnel within a reasonable period not to exceed 1 hour.

(b) The failure to provide immediately appropriate medical aid as required in subsection (a)(3) and (4) of this section to a person who has been rendered unconscious or subdued by the use of a hold shall for purposes of civil liability create a presumption, affecting the burden of proof, of willful negligence and reckless disregard for the safety and well-being of that person.

(c)(1) Every police officer who under color of authority willfully and intentionally violates the standards prescribed in this section or any regulations issued pursuant to this subchapter shall, upon conviction, be subject to a fine of \$5,000, or imprisonment not exceeding 1 year, or both, and removal from office.

(2) Such conduct shall also be subject to any civil remedies related to a violation of standards set forth in the police manual or general orders of the Metropolitan Police Department.

(d) The trachea hold is prohibited and the carotid artery hold shall be classified as a service weapon and all relevant Metropolitan Police Department general orders, special orders, and circulars shall be applicable.

(Jan. 25, 1986, D.C. Law 6-77, § 4, 32 DCR 6497.)

Section references. — This section is referred to in § 5-302.

Prior Codifications. — 1981 Ed., § 4-190.

Legislative history of Law 6-77. — For legislative history of D.C. Law 6-77, see Historical and Statutory Notes following § 5-125.01.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 5-125.01.

CASE NOTES

Construction and application.

Fight participant, who was not arrested, established battery claim against officer who used force to break up a fight between participant and another man in that evidence demonstrated unwanted touching by officer; officer intentionally grabbed participant around the neck, participant started panicking because he could not breathe, officer ignored participant's statement that he could not breathe and continued to hold him, photographs showed bruising to participant's neck and sternum, and law prohibited officers from using trachea hold. *Smith v. District of Columbia*, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Even if this section applies only to police officers, it is illegal for someone who is not a Metropolitan Police officer to use a chokehold, because such conduct comes within the definition of a common-law assault. *United States v. Holt*, 120 WLR 621 (Super. Ct. 1992).

Subchapter XIV. General Powers and Duties.

§ 5-127.01. Conduct of force; power to fine, suspend and dismiss; written charges; opportunity to be heard; removal without trial; amendment of charges.

In addition to the powers vested in them by law, the Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, under such penalties as the Council may deem necessary, all needful rules and regulations for the proper government, conduct, discipline, and good name of said Metropolitan Police force; and said Mayor is hereby authorized and empowered to fine, suspend with or without pay, and dismiss any officer or member of said police force for any offense against the laws of the United States or the laws and ordinances or regulations of the District of Columbia, whether before or after conviction thereof in any court or courts, and for misconduct in office, or for any breaches or violation of the rules and regulations made by the Council for the government, conduct, discipline, and good name of said police force; provided, that no person shall be removed from said police force except upon written charges preferred against him in the name of the Chief of Police of said police force to the trial board or boards hereinafter provided for and after an opportunity shall have been afforded him of being heard in his defense; but no person so removed shall be reappointed to any office in said police force; provided further, that special policemen and additional privates may be removed from office by the Mayor without cause and without trial; provided further, that charges preferred against any member of said police force to the trial board or boards hereinafter provided for may be altered or amended, in the discretion of such trial board or boards, at

any time before final action by such board or boards, under such regulations as the Council may adopt, provided the accused have an opportunity to be heard thereon.

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056.)

Cross references. — Merit system, application to police officers and firefighters, see 1-632.03.

Prior Codifications. — 1981 Ed., § 4-117.
1973 Ed., § 4-121.

Emergency legislation. — For temporary (90 day) video surveillance regulations, see § 2 of Metropolitan Police Department Video Surveillance Regulations Emergency Act of 2003 (D.C. Act 15-10, January 27, 2003, 50 DCR 1481).

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1982: The "Police Officers Outside Employment Act of 1982" (D.C. Law 4-132, July 24, 1982, 29 DCR 2450).

Mayor's Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor's Order 97-88, May 9,

Editor's notes. — Office of Major and Superintendent of Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(93) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-127.02. Affirmations and oaths to depositions.

The Mayor and the Chief of Police have power to administer, take, receive, and subscribe all affirmations and oaths to any depositions necessary by the rules and regulations of the Mayor, relating to the Metropolitan Police.

(R.S., D.C., § 392; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 8, 1906, 34 Stat. 221, ch. 3056.)

Cross references. — Merit system, application to police officers and firefighters, see 1-632.03.

Prior Codifications. — 1981 Ed., § 4-119.
1973 Ed., § 4-123.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-127.03. Duty to respect and obey Chief of Police.

It shall be the duty of the police force to respect and obey the Chief of Police as the head and chief of the police force, subject to the rules, regulations, and general orders of the Council of the District of Columbia and the Mayor of the District of Columbia.

(R.S., D.C., § 344; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see 1-632.03.

Prior Codifications. — 1981 Ed., § 4-122. 1973 Ed., § 4-126.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-127.04. Police to have power of constables; authorization to execute certain Superior Court orders.

(a) The Mayor of the District of Columbia, and the members of the police force, shall possess in every part of the District all the common-law powers of constables, except for the service of civil process and for the collection of strictly private debts, in which designation fines imposed for the breach of the ordinances in force in the District shall not be included.

(b) In addition to the powers enumerated in subsection (a) of this section, members of the Metropolitan Police Department shall execute orders of the Superior Court of the District of Columbia issued pursuant to § 16-1005.

(R.S., D.C., §§ 394, 1035; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Sept. 14, 1982, D.C. Law 4-144, § 8, 29 DCR 3131.)

Prior Codifications. — 1981 Ed., § 4-136. 1973 Ed., § 4-136.

Legislative history of Law 4-144. — Law 4-144, the "Proceedings Regarding Intrafamily Offenses Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-212 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-127.05. Execution of warrants.

Any warrant for search or arrest, issued by any judge of the District, may be executed in any part of the District by any member of the police force, without any backing or indorsement of the warrant, and according to the terms thereof; and all provisions of law in relation to bail in the District shall apply to this chapter.

(R.S., D.C., § 395.)

Cross references. — Arrests, officers pursuing fugitive into District, see § 23-901.

Search warrants, duties under, see § 23-523 et seq.

Search warrants, illegal alcoholic beverages, see § 25-803.

Search warrants, execution under Controlled Substances Act, see § 48-921.02.

Search warrants, time of execution, see § 23-523.

Service of process, Criminal Division of Superior Court, see § 16-703.

Prior Codifications. — 1981 Ed., § 4-138. 1973 Ed., § 4-138.

References in text. — Pursuant to the District of Columbia Court Reorganization Act of 1970, “judge” was substituted for “magistrate” in this section.

CASE NOTES

In general.

Under District of Columbia statute providing that any warrant issued by magistrate may be executed by any member of police force, Metropolitan Police had authority to execute federal search warrant based on violation of Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 4-138, 23-

501(1); 18 U.S.C. § 1405; Fed. Rules Crim. Proc. rule 41(c), 18 U.S.C.; Organization Order No. 153, D.C. Code Title I, Appendix III. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Subchapter XV. Special Police.

PART A.

GENERAL.

§ 5-129.01. Crossings and intersections; penalty for failure to stop car. [Repealed].

Repealed.

(May 10, 1989, D.C. Law 7-231, § 14a, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 4-113.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill

No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the

Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 5-129.02. Property of individual or corporation; compensation and regulation.

(a) The Mayor, on application of any corporation or individual, or in his own discretion, may appoint special police officers and security officers in connection with the property of, or under the charge of, such corporation or individual; provided, that the special police officers and security officers be paid wholly by the corporation or person on whose account their appointments are made.

(b) Special police officers and security officers, but not campus police officers, shall be required to complete minimum levels of pre-assignment, on-the-job, and in-service training.

(c) The Mayor, pursuant to subchapter I of chapter 5 of Title 2, may issue rules governing special police officers and security officers. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 3, 1899, 30 Stat. 1057, ch. 422; Nov. 16, 2006, D.C. Law 16-187, § 202, 53 DCR 6722.)

Cross references. — Regulated non-health related occupations and professions, see § 47-2853.04.

Special policemen, arrest powers, see § 23-582.

Section references. — This section is referred to in §§ 2-223.01, 47-2839a.

Prior Codifications. — 1981 Ed., § 4-114. 1973 Ed., § 4-115.

Effect of amendments. — D.C. Law 16-187 rewrote the section which had previously read as follows: "The Mayor of the District of Columbia, on application of any corporation or individual, or in his own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the Council of the District of Columbia may prescribe."

Legislative history of Law 16-187. — Law 16-187, the "Enhanced Professional Security Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-102, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respec-

tively. Signed by the Mayor on July 25, 2006, it was assigned Act No. 16-465 and transmitted to both Houses of Congress for its review. D.C. Law 16-187 became effective on November 16, 2006.

Mayor's Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor's Order 97-88, May 9, 1997 (44 DCR 2959).

Editor's notes. — Uniform requirements for security officers amended: Section 2 of D.C. Law 5-180 amended § 4.2 of the Regulation Establishing Standards For Certification And Employment For Security Officers, to remove the prohibition against security officers wearing uniforms with stripes, enacted December 1, 1974 (Reg. 74-31; 17 DCMR 2112.1).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(91) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Arrest powers.

Construction with federal law.

Arrest powers.

Special police officers are appointed by the mayor of the District of Columbia, and they are commissioned for the special purpose of protecting property on the premises of the employer, and this commission authorizes special police officers to exercise arrest powers significantly broader than those of ordinary citizens or licensed security guards; in particular, they have the same powers as a law enforcement officer to arrest without warrant for offenses committed within premises to which their jurisdiction extends. *Limpuangthip v. United States*, 932 A.2d 1137, 2007 D.C. App. LEXIS 578 (2007).

Construction with federal law.

Special police officers, who are appointed by

the mayor of the District of Columbia and are commissioned for the special purpose of protecting property on the premises of the employer, are a "state or public actor," for Fourth Amendment purposes, when they invoke state authority through manner, word or deed, i.e., they act like a regular police officer. *Limpuangthip v. United States*, 932 A.2d 1137, 2007 D.C. App. LEXIS 578 (2007).

Special police officers, who are appointed by the mayor of the District of Columbia and are commissioned for the special purpose of protecting property on the premises of the employer, are not in all their actions equated with regular police officers, but special police officer does act as a state agent or instrument, for Fourth Amendment purposes, when the challenge involves the arrest of a suspect and actions related thereto. *Limpuangthip v. United States*, 932 A.2d 1137, 2007 D.C. App. LEXIS 578 (2007).

§ 5-129.03. Appointment of special police without pay.

The Mayor of the District of Columbia may, upon any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration, appoint as many special privates without pay, from among the citizens, as he may deem advisable, and for a specified time. During the term of service of such special privates, they shall possess all the powers and privileges and perform all the duties of the privates of the standing police force of the District and such special privates shall wear an emblem to be presented by the Mayor.

(R.S., D.C., §§ 378, 379; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Section references. — This section is referred to in § 5-105.05.

Prior Codifications. — 1981 Ed., § 4-130. 1973 Ed., § 4-133.

Delegation of Authority. — Delegation of Authority to the Chief of Police to Appoint Special Police Without Pay, see Mayor's Order 2009-4, January 16, 2009 (56 DCR 2018).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

★
PART B.

SECURITY OFFICER ADVISORY COMMISSION.

§ 5-129.21. Security Officer Advisory Commission.

(a) There is established a Security Officer Advisory Commission ("Commission") to make recommendations on the training of security officers.

(b) The Commission shall be comprised of the following 11 members, all of whom shall be District residents and who shall be appointed by the Mayor and confirmed by the Council in accordance with § 1-523.01(f):

(1) Four representatives of security officer companies;

(2) Three actively employed security officers;

(3) One full-time faculty member of a college or university who teaches and whose area of expertise is in the field of security with insurance, risk management, lending, or underwriting experience;

(4) Two representatives of organized labor with security guard members; and

(5) One representative from owners or managers of commercial property in the District.

(c) The Mayor and the Chief of the Metropolitan Police Department, or their designees, shall be ex-officio members of the Commission.

(d) The Mayor shall designate one member to serve as Chairperson of the Commission.

(e)(1) Except as provided in paragraph (2) of this subsection, all members of the Commission shall serve 3-year terms.

(2) Of the initial appointments, 3 members shall serve one-year terms and 2 members shall serve 2-year terms.

(3) A member may be reappointed for additional terms.

(4) Vacancies shall be filled in the same manner as appointments, with the appointed member to serve the remainder of the unexpired term.

(f) The members of the Commission shall receive no compensation for their service, but shall be allowed their actual and necessary expenses incurred in the performance of their functions.

(g) The Commission shall meet as frequently as it deems necessary but not less than 3 times each calendar year. Special meetings may be called by the Chairperson, at the request of the Mayor or the Chief of the Metropolitan Police Department, or upon the written request of 6 members of the Commission.

(h) The Commission may establish its own procedures with respect to the conduct of its meetings and other affairs; provided, that all recommendations made by the Commission to the Mayor and the Chief of the Metropolitan Police Department shall require the affirmative vote of a majority of the Commission.

(i)(1) The Commission shall make recommendations to the Mayor for rules pertaining to training for security officers, but not campus police officers, including:

(A) Minimum training duration and content required at training programs;

(B) Minimum qualifications for training instructors; and

(C) Training requirements which security officers and applicants must complete before being certified as security officers.

(2) The Commission may:

(A) Conduct studies and surveys, and issue reports regarding the training of security officers;

(B) Visit and inspect any security officer training program; and

(C) Perform such other acts as may be necessary or appropriate to carry out its functions.

(Nov. 16, 2006, D.C. Law 16-187, § 101, 53 DCR 6722.)

Legislative history of Law 16-187. — Law 16-187, the “Enhanced Professional Security Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-102, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second read-

ings on June 6, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 25, 2006, it was assigned Act No. 16-465 and transmitted to both Houses of Congress for its review. D.C. Law 16-187 became effective on November 16, 2006.

Subchapter XV-A. Detective Advisors.

§ 5-129.31. Detective advisers. [Expired].

Expired.

(Sept. 30, 2004, D.C. Law 15-194, § 1102, 51 DCR 9406.)

Legislative history of Law 15-194. — Law 15-194, the “Omnibus Public Safety Agency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-32, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 6, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 24, 2004, it was assigned Act No. 15-463 and transmitted to both Houses of Congress for

its review. D.C. Law 15-194 became effective on September 30, 2004.

Delegation of Authority. — Delegation of Mayor’s Rulemaking Authority Pursuant to the Detective Adviser Act of 2004 to the Chief, Metropolitan Police Department, see Mayor’s Order 2005-99, June 14, 2005 (52 DCR 8165).

Editor’s notes. — Pursuant to subsec. (d), this section expired 2 years after September 30, 2004.

Subchapter XV-B. Reserve Corps.

§ 5-129.51. Metropolitan Police Department Reserve Corps.

(a) The Mayor shall establish a Metropolitan Police Department Reserve Corps (“Reserve Corps”) in the District of Columbia. The purpose of the Reserve Corps shall be to assist full-time, sworn police personnel in both the day-to-day and emergency delivery of law enforcement services, consistent with applicable law.

(b) The Reserve Corps shall have as its membership a corps of unpaid volunteers who fulfill police duties and responsibilities as determined by the Chief of the Metropolitan Police Department.

(c) The selection criteria required for and training provided to members of the Reserve Corps shall be similar to the selection criteria required for and training provided to full-time, sworn police personnel. When establishing the criteria, the Chief of Police shall review national standards, such as the Commission on Accreditation for Law Enforcement Agencies.

(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section within 180 days of September 30, 2004. The rules shall:

- (1) Prescribe the duties and responsibilities of Reserve Corps members;
- (2) Define the scope of Reserve Corps members' authority and discretion in carrying out their duties and responsibilities, including any limitations on or restrictions to their authority and discretion; and
- (3) Delineate the supervision Reserve Corps members are to receive.

(Sept. 30, 2004, D.C. Law 15-194, § 1002, 51 DCR 9406.)

Legislative history of Law 15-194. — Law 15-194, the “Omnibus Public Safety Agency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-32, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 6, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 24, 2004, it was assigned Act No. 15-463 and transmitted to both Houses of Congress for

its review. D.C. Law 15-194 became effective on September 30, 2004.

Delegation of Authority. — Delegation of Mayor's Rulemaking Authority Pursuant to the Metropolitan Police Department Reserve Corps Establishment Act of 2004 and the Volunteer Act of 1977 to the Chief, Metropolitan Police Department, see Mayor's Order 2006-57, May 19, 2006 (53 DCR 5313).

Subchapter XVI. Performing Police Band.

§ 5-131.01. Authorization; detail of local officers; employment and compensation of Director.

There is hereby authorized to be established in the Metropolitan Police Department a band to perform at such municipal or civic functions and events as may be authorized by the Mayor of the District of Columbia. The Mayor is authorized in his discretion to detail officers and members of the Metropolitan Police force and the District of Columbia Fire Department to participate in the activities of such band. The said Mayor is authorized to employ, without reference to the civil service laws, 1 Director for such band with compensation at a rate not to exceed the rate of compensation to which a captain in the Metropolitan Police force is entitled.

(July 11, 1947, 61 Stat. 311, ch. 226, § 1; Aug. 14, 1957, 71 Stat. 345, Pub. L. 85-129, § 1; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(1).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-179.

1973 Ed., § 4-182.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-131.02. Detail of federal officers.

The Secretary of the Interior is authorized in his discretion to detail officers and members of the United States Park Police force to participate in the activities of the band established by this subchapter, and the Secretary of the Treasury is authorized in his discretion to detail officers and members of the United States Secret Service Uniformed Division to participate in the activities of such band.

(July 11, 1947, ch. 226, § 2; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(2); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is re-

ferred to in §§ 5-131.03, 5-131.04, and 5-131.05.

Prior Codifications. — 1981 Ed., § 4-180. 1973 Ed., § 4-182a.

§ 5-131.03. Retirement of Director — Conditions; annuities.

(a) Notwithstanding the limitations of existing law, the person who is the Director of the Metropolitan Police Force band may elect to retire after having served 10 or more years in such capacity and having attained the age of 70 years. Upon such retirement, whether for age and service or for disability, said Director and his surviving spouse or domestic partner, shall be entitled to receive annuities in amounts equivalent to, and under the conditions applicable to, the annuities which a captain in the Metropolitan Police force and his surviving spouse or domestic partner, may be entitled to receive after such captain has retired from said force for substantially the same reason as that for which said Director may retire, whether for age and service or for disability, as the case may be. If the said Director shall apply for retirement for disability, he shall not be eligible to retire under § 5-710, but he shall be eligible to apply for retirement under § 5-709, in like manner as if the said Director were an officer or member of the Metropolitan Police force. The annuities hereby authorized shall be in addition to any pension or retirement compensation which said Director may be entitled to receive from any other source, whether from the United States or otherwise. The annuities payable to said Director and his surviving spouse or domestic partner pursuant to this subchapter shall be payable from District of Columbia appropriations, but shall not be considered as annuities payable to an officer or member of the Metropolitan Police force or to the surviving spouse or domestic partner, of such officer or member.

Appropriations for the operations of the Metropolitan Police Department are made available for this purpose. Annuities authorized by this section shall be computed on the basis of compensated service rendered after July 11, 1947.

(b) For the purposes of this section, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(July 11, 1947, ch. 226, § 3; Sept. 22, 1959, 73 Stat. 640, Pub. L. 86-356; Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(a); Sept. 12, 2008, D.C. Law 17-231, § 14, 55 DCR 6758.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-181. 1973 Ed., § 4-183a.

Effect of amendments. — D.C. Law 17-231 designated subsec. (a); in subsec. (a), substituted “spouse, domestic partner,” for “spouse”; and added subsec. (b).

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership

Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

§ 5-131.04. Applicable statutory provisions; transfer of moneys from Civil Service Retirement and Disability Fund.

The person who is the Director of the Metropolitan Police Force band shall, upon his retirement from such position, be retired under the provisions of this subchapter and not under subchapter III of Chapter 83 of Title 5, United States Code, and the moneys to his credit in the Civil Service Retirement and Disability Fund created under the authority of such subchapter, on the date of such retirement, together with such moneys in such Fund as may have been contributed by the District of Columbia toward the cost of his annuity under such subchapter, shall be transferred to the credit of the general revenues of the District of Columbia.

(July 11, 1947, ch. 226, § 4; Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356; Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(b).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-182.

1973 Ed., § 4-183b.

References in text. — “Subchapter III of Chapter 83 of Title 5, United States Code” is codified at 5 U.S.C. §§ 8331 to 8351.

§ 5-131.05. Appropriations.

Appropriations to carry out the purpose of this subchapter is hereby authorized.

(July 11, 1947, 61 Stat. 311, ch. 226, § 5; Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(3).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-183. 1973 Ed., § 4-184.

Subchapter XVI-A. Contracting Procedures for Public School Security.

§ 5-132.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Chancellor” means the Chancellor of the District of Columbia Public Schools.

(1A) “DCPS” means the District of Columbia Public Schools.

(2) “MPD” means the Metropolitan Police Department.

(2A) “Public charter schools” shall have the same meaning as provided in § 38-1800.02(29).

(3) “School resource officer” means a sworn MPD officer assigned to DCPS or public charter schools for the purpose of working in collaboration with DCPS, public charter schools, and community-based organizations to:

(A) Prevent crime through community-oriented policing strategies;

(B) Address crime and disorder, gang, and drug activity problems affecting or occurring in or around the schools to which the school resource officer is assigned; and

(C) Ensure that DCPS schools and grounds and public charter schools and their grounds are safe environments for students, teachers, and staff.

(4) “School security guards” means un-armed personnel, trained and hired by the MPD School Safety Division.

(5) “School security personnel” means school resource officers and school security guards.

(6) “Superintendent” means the Superintendent of the District of Columbia Public Schools.

(Apr. 13, 2005, D.C. Law 15-350, § 101, 52 DCR 2005; Mar. 21, 2009, D.C. Law 17-320, § 2(a), 56 DCR 219; Oct. 2, 2010, D.C. Law 18-232, § 201(a), 57 DCR 4504.)

Effect of amendments. — D.C. Law 17-320 redesignated former par. (1) as par. (1A); and added par. (1).

D.C. Law 18-232 added par. (2A); in the lead-in language of par. (3), inserted “or public charter schools” and “, public charter schools,”; and, in par. (3)(C), substituted “DCPS schools and grounds and public charter schools and their grounds” for “DCPS schools and grounds”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law 15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Metropolitan Po-

lice Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 2 of School Safety and Security Contracting Procedures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 2 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — Law 15-350, the “School Safety and Security Contracting Procedures Act of 2004”, was introduced in Council and assigned Bill No. 15-725 which was referred to the Committee on Judi-

ciary and the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on July 13, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-745 and transmitted to both Houses of Congress for its review. D.C. Law 15-350 became effective on April 13, 2005.

Legislative history of Law 17-320. — Law 17-320, the “School Safety and Security Contracting Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-742 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 22, 2008, it

was assigned Act No. 17-624 and transmitted to both Houses of Congress for its review. D.C. Law 17-320 became effective on March 21, 2009.

Legislative history of Law 18-232. — Law 18-232, the “School Safe Passage Emergency Zone Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-555, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 19, 2010, it was assigned Act No. 18-402 and transmitted to both Houses of Congress for its review. D.C. Law 18-232 became effective on October 2, 2010.

§ 5-132.02. Establishment of the Metropolitan Police Department School Safety Division; functions of the School Safety Division.

(a) There is established within the Metropolitan Police Department a School Safety Division that shall provide security for the District of Columbia Public Schools.

(b) The School Safety Division shall be headed by a Director, appointed by, and reporting to, the Chief of Police with rank equal to a Commander or above.

(c) The School Safety Division shall:

(1) Hire all school security personnel for DCPS;

(2)(A) Deploy school security personnel to DCPS; and

(B) Deploy school resource officers to public charter schools;

(3) Provide oversight over school security personnel and be responsible for administering all disciplinary actions related to school security personnel, including termination;

(4) Execute, approve, monitor, and provide oversight over any contract for school security personnel;

(5) Create and implement security and emergency operations plans for DCPS in concert with the Chancellor; and

(6) Provide recommendations to the Mayor, the Council, and the Chancellor regarding the impact of school closings, consolidations, grade reconfigurations, use of swing space during school reconstruction, and gang activity on the safety and well-being of children.

(d)(1) The School Safety Division shall develop a plan to be implemented before the beginning of each DCPS school year for protecting children walking to and from DCPS and public charter schools and for protecting children from gang and crew violence on, in, and around DCPS and public charter schools' property. Beginning in 2009, this plan shall be provided to the Mayor, the Council, and the Chancellor, by August 15th of each year.

(2) The plan shall include a description of:

(A) Safety issues children may face during passage to and from school, and recommended solutions to these issues; and

(B) A description of specific gang and crew conflicts and recommended

solutions for the protection of children from gang and crew violence on, in, and around DCPS and public charter schools property.

(3) The plan shall incorporate the recommendations of the District Department of Transportation on the deployment of school crossing guards required under § 38-3101(f-1).

(Apr. 13, 2005, D.C. Law 15-350, § 102, 52 DCR 2005; Mar. 21, 2009, D.C. Law 17-320, § 2(b), 56 DCR 219; Oct. 2, 2010, D.C. Law 18-232, § 201(b), 57 DCR 4504.)

Effect of amendments. — D.C. Law 17-320, in subsec. (b), substituted “a Commander or above” for “an Assistant Chief”; in subsec. (c)(4), deleted “and” from the end; in subsec. (c)(5), substituted “Chancellor; and” for “Superintendent.”; and added subsecs. (c)(6) and (d).

D.C. Law 18-232 rewrote subsec. (c)(2); in subsec. (d)(1), rewrote the first sentence which had read: “The School Safety Division shall develop a plan to be implemented before the beginning of each DCPS school year for protecting children walking to and from school and for protecting children from gang and crew violence on, in, and around DCPS property.”; and, in subsec. (d)(2)(B), substituted “DCPS and public charter schools property” for “DCPS property”. Prior to amendment, subsec. (c)(2) read as follows: “(2) Deploy school security personnel to DCPS;”

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law

15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 3 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 3 of School Safety and Security Contracting Procedures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 3 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — For Law 15-350, see notes following § 5-132.01.

Legislative history of Law 17-320. — For Law 17-320, see notes following § 5-132.01.

Legislative history of Law 18-232. — For Law 18-232, see notes following § 5-131.01.

§ 5-132.03. Training for school security personnel.

The School Safety Division shall develop a training curriculum for all school security personnel providing security for DCPS. The curriculum shall be focused on training supervisory and on-site personnel so that they will provide appropriate security procedures for the various socioeconomic conditions at each educational facility. The curriculum shall include training in the following areas:

- (1) Child development;
- (2) Effective communication skills;
- (3) Behavior management;
- (4) Conflict resolution;
- (5) Substance abuse and its effect on youth;
- (6) Availability of social services for youth;
- (7) District of Columbia laws and regulations, including Board of Education regulations;
- (8) Constitutional standards for searches and seizures conducted by school security personnel on school grounds; and
- (9) Gang and crew violence prevention.

(Apr. 13, 2005, D.C. Law 15-350, § 103, 52 DCR 2005; Mar. 21, 2009, D.C. Law 17-320, § 2(c), 56 DCR 219.)

Effect of amendments. — D.C. Law 17-320, in par. (7), deleted “and” from the end; in par. (8), substituted “ground; and” for “ground.”; and added par. (9).

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law 15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 4 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 4 of School Safety and Security Contracting Procedures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 4 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — For Law 15-350, see notes following § 5-132.01.

Legislative history of Law 17-320. — For Law 17-320, see notes following § 5-132.01.

§ 5-132.04. Comprehensive plan on school security; Memorandum of Agreement.

(a) By March 1, 2005, the Mayor shall recommend to the Council whether the school security guards shall be employees of the MPD, employees of DCPS, or contracted for by the MPD for Fiscal Year 2006 and beyond.

(b) By June 1, 2005, the Mayor, in coordination with the Superintendent, DCPS administrators, parents, students and teachers, shall develop a comprehensive plan to implement this subchapter and submit the plan to the Board of Education and the Council. The plan shall include the following:

- (1) The qualifications and hiring process for school security personnel;
- (2) The transfer of personnel, property, funds, and records including an ongoing procedure for allocating DCPS capital funds to MPD for security needs; and

- (3) Lines of authority, supervision, and communication between the MPD and DCPS, including a process for resolving disagreements between DCPS and MPD at all levels, accepted by both the Mayor and the Superintendent.

(c) The plan required by subsection (b) of this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day period, the proposed plan shall be deemed approved.

(d) MPD and DCPS shall enter into a Memorandum of Agreement that shall specify security terms and responsibilities as outlined in the recommendation and plan submitted by the Mayor pursuant to subsections (a) and (b) of this section.

(e) Both the comprehensive implementation plan and the Memorandum of Agreement required by this section shall describe in detail, but not be limited to, the following:

- (1) How school security personnel deployed at each school will provide security in coordination with the school's principal; provided, that during emergencies, incident command shall be consistent with the District of Columbia response plan as defined by § 7-2301(1A); and

(2) How the operating and capital funds, positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to DCPS that support the provision of security to DCPS will be utilized to carry out the provisions of this subchapter.

(Apr. 13, 2005, D.C. Law 15-350, § 104, 52 DCR 2005.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 5 of School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law 15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 5 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 5 of School Safety and Security Contracting Procedures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 5 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — For Law 15-350, see notes following § 5-132.01.

§ 5-132.05. Authority to issue RFP's for school security related contracts.

Responsibility for the issuance of a Request for Proposals for any security guard or security related contract for DCPS for a contract term to begin June 30, 2005, or later shall transfer to the MPD as of August 2, 2004. The responsibility for awarding, executing, and funding a contract resulting from an RFP issued under this section shall be the subject of a Memorandum of Agreement between DCPS and MPD.

(Apr. 13, 2005, D.C. Law 15-350, § 105, 52 DCR 2005.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 6 of School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law 15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 6 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 6 of School Safety and Security Contracting Proce-

dures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 2(a) of School Security Authority Extension Emergency Amendment Act of 2004 (D.C. Act 15-728, January 13, 2005, 52 DCR 1954).

For temporary (90 day) addition, see § 6 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — For Law 15-350, see notes following § 5-132.01.

§ 5-132.06. Applicability of §§ 5-132.02 and 5-132.03.

Sections 5-132.02 and 5-132.03 shall apply as of the first day of October 1, 2005, or upon the submission by the Mayor to the Council of a supplemental budget to effect the transfer of funds from DCPS to the MPD, whichever occurs first, and Council approval pursuant to § 5-132.04(c).

(Apr. 13, 2005, D.C. Law 15-350, § 106, 52 DCR 2005.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 7 of School

Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law

15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary (90 day) addition, see § 7 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) addition, see § 7 of School Safety and Security Contracting Proce-

dures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) addition, see § 7 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

Legislative history of Law 15-350. — For Law 15-350, see notes following § 5-132.01.

Subchapter XVI-B. Establishment of Safe Passage Zones Near Schools.

§ 5-132.21. School safe passage emergency zones.

(a) For the purposes of this section, the term:

(1) “Assault-related offense” means a crime or offense established in §§ 22-401, 22-402, 22-403, 22-404, 22-404.01, 22-406, 22-407, and 22-851.

(2) “Chief of Police” means the Chief of the Metropolitan Police Department.

(3) “Crime of violence” shall have the same meaning as provided in § 23-1331(4).

(4) “Dangerous crime” shall have the same meaning as provided in § 23-1331(3).

(5) “Disperse” means to depart from the designated school safe passage emergency zone and not to reassemble within the zone with anyone from the group ordered to depart.

(6) “Known violent or dangerous offender” means a person who has, within the knowledge of the arresting officer, been convicted, or adjudicated delinquent, in any court of any violation involving an assault-related offense, a crime of violence, or a dangerous crime.

(7) “MPD” means the Metropolitan Police Department.

(8) “School day” means 7:00 a.m. until 9:00 p.m. Monday through Friday.

(b) The Chief of Police may declare any area within 1,000 feet of the perimeter of the grounds of a District of Columbia public school or public charter school or within 300 feet of the boundary of the area affecting passage between the school and proximate public transportation a school safe passage emergency zone during a school day for a period not to exceed 5 consecutive school days when the school is in session. The Chief of Police shall inform his or her commanders, the Mayor, and the Council of the declaration of a school safe passage emergency zone and explain the basis for it pursuant to subsection (c) of this section.

(c) In determining whether to designate a school safe passage emergency zone, the Chief of Police shall find the following:

(1) The occurrence of a disproportionately high number of incidences of assault-related offenses, crimes of violence, or dangerous crimes committed in the proposed school safe passage emergency zone within the preceding 2-week period;

(2) Objective or verifiable information that shows that disproportionately high incidences of assault-related offenses, crimes of violence, or dangerous

crimes are occurring on public space or public property within the proposed school safe passage emergency zone; or

(3) Any other verifiable information from which the Chief of Police may ascertain whether the health or safety of students or employees of or visitors to public school facilities are endangered by assault-related offenses, crimes of violence, or dangerous crimes in the school safe passage emergency zone.

(d) Upon the designation of a school safe passage emergency zone, the MPD shall mark each block within the school safe passage emergency zone by using barriers, tape, signs, or police officers that post or announce the following information in the immediate area of, and borders around, the school safe passage emergency zone:

(1) A statement that it is unlawful for a person to congregate in a group of 3 or more persons for the purpose of engaging in an assault-related offense, a crime of violence, or a dangerous crime within the boundaries of a school safe passage emergency zone, and fail to disperse after being instructed to disperse by a uniformed officer of the MPD, or a non-uniformed officer of the MPD upon display of MPD identification, who reasonably believes the person is congregating for the purpose of engaging in an assault-related offense, a crime of violence, or a dangerous crime;

(2) The boundaries of the school safe passage emergency zone;

(3) A statement of the effective dates and hours of the school safe passage emergency zone designation; and

(4) Any additional information the Chief of Police considers appropriate.

(e)(1) It shall be unlawful for a person to congregate in a group of 3 or more persons on public space or public property within a school safe passage emergency zone established pursuant to subsection (b) of this section for the purpose of engaging in an assault-related offense, a crime of violence, or a dangerous crime, and fail to disperse after being instructed to disperse by a uniformed officer of the MPD, or a non-uniformed officer of the MPD upon display of MPD identification, who reasonably believes the person is congregating for the purpose of engaging in an assault-related offense, a crime of violence, or a dangerous crime.

(2) In making a determination that a person is congregating in a school safe passage emergency zone for the purpose of engaging in an assault-related offense, a crime of violence, or a dangerous crime, the totality of the circumstances involved shall be considered. Among the circumstances which may be considered in determining purpose are:

(A) Conduct of the person being observed indicating that the person is engaging in or is about to engage in an assault-related offense, a crime of violence, or a dangerous crime;

(B) Information from a reliable source indicating that the person being observed is engaging in or about to engage in an assault-related offense, a crime of violence, or a dangerous crime within the area currently designated as a school safe passage emergency zone;

(C) Whether the person is identified by an officer as a member of a gang or association which engages in assault-related offenses, crimes of violence, or dangerous crimes; and

(D) Whether the person is a known violent or dangerous offender.

(f) Any person who violates this section shall, upon conviction, be subject to a fine of not more than \$300, or imprisonment for not more than 6 months.

(g) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute all violations of this section.

(Oct. 2, 2010, D.C. Law 18-232, § 101, 57 DCR 4504.)

Legislative history of Law 18-232. — Law 18-232, the “School Safe Passage Emergency Zone Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-555, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first

and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 19, 2010, it was assigned Act No. 18-402 and transmitted to both Houses of Congress for its review. D.C. Law 18-232 became effective on October 2, 2010.

Subchapter XVII. Miscellaneous.

§ 5-133.01. [Reserved].

§ 5-133.02. Allowance for use of private motor vehicles by inspectors.

The Mayor of the District of Columbia is hereby authorized to pay to not more than 3 inspectors of the Metropolitan Police force who may be called upon to use privately-owned automobiles in the performance of official duties for each automobile an allowance not to exceed \$480 per annum.

(June 25, 1947, 61 Stat. 179, ch. 145.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-110. 1973 Ed., § 4-108a.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.03. Detail of privates.

The Mayor of the District of Columbia is hereby authorized to detail from time to time from the privates of the police force such number of privates as may in his judgment be necessary for special service in the detection and prevention of crime, and while serving in such capacity they shall have the rank of sergeants in the force.

(Feb. 28, 1901, 31 Stat. 820, ch. 623, § 3.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-111. 1973 Ed., § 4-110.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.04. Watchmen at Municipal Building. [Repealed].

Repealed.

(Mar. 3, 1909, 35 Stat. 689, ch. 250; Dec. 7, 2004, D.C. Law 15-205, § 3103, 51 DCR 8441e.)

Prior Codifications. — 1981 Ed., § 4-112. 1973 Ed., § 4-111.

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 3103, 3104 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see §§ 3103, 3104 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was

assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Editor’s notes. — Applicability of subtitle A of title III of D.C. Law 15-205: Section 3104 of D.C. Law 15-205 provided: “This subtitle shall apply as of the implementation date for transferring the Protective Services Division, and the functions performed by the Protective Services Division, from the Office of Property Management to the Metropolitan Police Department specified in a reorganization plan submitted by the Mayor to the Council pursuant to the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Official Code § 1-315.01 et seq.), that has been approved by the Council.”

§ 5-133.04a. Watchmen at Municipal Building.

Policemen shall not be detailed for duty as watchmen at the Municipal Building.

(Mar. 3, 1909, 35 Stat. 689, ch. 250, as added June 16, 2006, D.C. Law 16-127, § 2, 53 DCR 4712.)

Legislative history of Law 16-127. — Law 16-127, the “Government Facility Security Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-388 which was referred to the Committees on the Judiciary and Government Operations. The Bill was ad-

opted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 21, 2006, it was assigned Act No. 16-345 and transmitted to both Houses of Congress for its review. D.C. Law 16-127 became effective on June 16, 2006.

§ 5-133.05. Public buildings and grounds belonging to the United States.

The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia.

(July 29, 1892, 27 Stat. 325, ch. 320, § 15.)

Cross references. — Capitol Building and Grounds, jurisdiction and control, see § 10-503.01.

Public parks, playgrounds, and reservations, regulation and control, see § 10-101 et seq.

Prior Codifications. — 1981 Ed., § 4-116.

1973 Ed., § 4-120.

Emergency legislation. — For temporary (90 day) amendment of section, see § 802 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

CASE NOTES

ANALYSIS

Construction and application.

In general.

Jurisdiction.

Unlawful arrests.

Construction and application.

Regulation promulgated by Capitol Police Board pursuant to federal statute restricting demonstration activity on grounds of United States Capitol was "act of Congress applicable exclusively to the District of Columbia," not a federal regulation, and thus properly considered to be statute of District of Columbia for purposes of §§ 1983; Capitol grounds were within District and were subject to District's general laws. *Lederman v. United States*, 539 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 15366 (2008).

The District of Columbia statute providing that provisions of several laws and regulations within District of Columbia for protection of public or private property and preservation of peace and order are extended to all public buildings and public grounds belonging to United States within District of Columbia assimilated subsequently enacted District of Columbia unlawful entry statute, if such assimilation were necessary. D.C. Code 1961, §§ 4-120, 22-3102. *Whittlesey v. United States*, 221 A.2d 86, 1966 D.C. App. LEXIS 190 (App. 1966).

In general.

Criminal provisions of District of Columbia Code apply to all property owned by United States in District unless such property is expressly exempt from coverage by Congress. U.S. Const. Art. 1, § 8, cl. 17; D.C. Code 1973,

§ 4-120. *McEachin v. United States*, 432 A.2d 1212, 1981 D.C. App. LEXIS 312 (1981).

Jurisdiction.

In prosecution for falsely pretending to be a member of District of Columbia Metropolitan Police, fact that scene of impersonation was in park subject to jurisdiction of United States Park Police did not establish a fatal variance under Code sections granting Metropolitan Police and Park Police concurrent jurisdiction over United States Parks within District of Columbia. D.C. Code 1940, §§ 4-120, 4-201. *Taylor v. U.S.*, 167 F.2d 752, 1948 U.S. App. LEXIS 2493 (1948).

Unlawful arrests.

Evidence that metropolitan police department of District of Columbia is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrated that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the chief had become, at the time of the arrests, a borrowed servant of the United States. D.C. Code § 9-126. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

§ 5-133.06. Trial boards.

The Mayor of the District of Columbia is also hereby authorized and empowered to create one or more trial board or boards, to be composed of such number of persons as said Mayor may appoint thereto, for the trial of officers and members of said police force; and the Council of the District of Columbia is hereby authorized and empowered to make and amend rules of procedure before such trial board or boards as it deems proper and the Mayor is hereby authorized and empowered to change or abolish any such trial board or boards as he may deem proper; and the findings of such trial board or boards shall be final and conclusive unless appeal in writing therefrom is made within 5 days to the Mayor of the District of Columbia, the hearings on appeal to be submitted either orally or in writing, and the decision of the said Mayor thereon shall be final and conclusive; provided, that said Mayor shall not be required, in his review of the sentences and findings of such trial board or boards, to take evidence, either oral, written, or documentary, and he shall have power to reduce or modify the findings and penalty of the trial board or boards or remand any case against any officer or member of said police force to such board or boards for such further proceedings as he may deem necessary; provided, that the chairman for the time being of any and every trial board be, and he is hereby, authorized to administer oaths to and take affirmations of witnesses before such board or boards; and provided, that the rules and regulations of said Metropolitan Police force promulgated and in force on July 8, 1906, are hereby ratified and shall remain in force until changed, altered, amended, or abolished by said Council.

(Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in § 5-1114.

Prior Codifications. — 1981 Ed., § 4-118. 1973 Ed., § 4-122.

Delegation of Authority. — Delegation of Authority—Secretary of the District of Columbia, see Mayor's Order 95-26, January 27, 1995.

Delegation of Authority—Office of the Secretary, see Mayor's Order 97-87, May 6, 1997 (44 DCR 2958).

Editor's notes. — Boards established: Reorganization Order No. 48 of the Board of Commissioners, dated June 26, 1953, established in the government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board to operate in accordance with applicable laws, rules, and regulations. The Order set forth the purpose, manner of selection of members, and the functions of the Boards, and abolished the previously existing Police Trial and Review Boards. This Order was issued pursuant to Reorganization Plan No. 5 of 1952.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(94) and (95) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Advisory opinions.
Civil rights.
Decisions of board.
Evidence.
In general.
Jurisdiction.
Review.

Advisory opinions.

The Board of Commissioners of the District of Columbia may not delegate its power to take disciplinary action for dereliction of duty against members of Metropolitan Police Department but there is nothing to prevent Board from seeking outside advisory opinions from members of local bar association or any other group, and such group would not be part of Board and its designated representatives since they would not be bona fide employees of municipal government, and therefore commissioners did not oust themselves of their statutory powers by appointment of three member outside committee to render advisory opinion relating to activities of certain police officer. Fed.Rules Crim.Proc. rule 6(e), 18 U.S.C.; D.C. Code 1940, § 4-122. In re Bullock, 103 F.Supp. 639, 1952 U.S. Dist. LEXIS 4539 (D.D.C.1952).

Civil rights.

Where police trial board recommended that police officer be removed from police force, where, before mayor acted upon recommendation, officer complained to mayor that police department was violating Title VII by retaliating against him for having brought employment discrimination suit, where officer amended his complaint in district court to include allegation of retaliation, and where 180 days elapsed without any action on grievance, officer sufficiently complied with Title VII's requirement that he first complain to employing agency prior to bringing suit, and court would not require officer to take purely formal step of dismissing complaint and then refiling it just to gain filing date more than 180 days later than that upon which he presented charge to mayor. Civil Rights Act of 1964, § 717 as amended 42 U.S.C. § 2000e-16. Bethel v. Jefferson, 589 F.2d 631, 1978 U.S. App. LEXIS 7867 (C.A.D.C. 1978).

For purposes of requirement of section of Civil Rights Act of 1964 that federal employee first complain to employing agency prior to bringing employment discrimination suit, where police officer complained to mayor that police department was violating Title VII by retaliating against him for having brought his employment discrimination lawsuit, if complaint should have been addressed elsewhere,

mayor had obligation to refer police officer to proper forum; mayor could not prevent filing of discrimination charge with his office and then, after time for proper filing with another agent of same government had expired, reject charges as having been filed in the wrong place. Civil Rights Act of 1964, § 717 as amended 42 U.S.C. § 2000e-16. Bethel v. Jefferson, 589 F.2d 631, 1978 U.S. App. LEXIS 7867 (C.A.D.C. 1978).

Decisions of board.

Trial court erred in ruling that trial board's decision to terminate police officer was flawed because only two of three members participated in preparing findings and conclusions, in that quorum of board participated in preparing findings and conclusions and all three trial board members had originally recommended officer's termination. District of Columbia v. Konek, 477 A.2d 730, 1984 D.C. App. LEXIS 429 (1984).

Evidence.

Where charges were filed against members of District of Columbia police force on ground of conduct prejudicial to reputation, good order and discipline of police force, specification that the members stopped in front of certain premises and were given money in attempt to procure or bring about failure of the members to report violation of law, or to take proper police action in connection with gambling business carried on in the premises was sufficient. Brodie v. Young, 133 F.2d 406, 1943 U.S. App. LEXIS 3820 (1943).

Where members of police force of District of Columbia were charged with conduct prejudicial to reputation, good order, and discipline of police force, evidence supported trial board's determination finding the members guilty and the affirmation of such determination by the Commissioners of the District of Columbia. Brodie v. Young, 133 F.2d 406, 1943 U.S. App. LEXIS 3820 (1943).

Where police tribunals had full jurisdiction of charges against members of police force, specifications were adequate and sufficient and evidence supported finding that the members were guilty, it was not necessary for court to decide whether case was proper one for certiorari or whether the members lost privilege of using certiorari by their long delay in filing petition. Fed.Rules Crim.Proc. rule 37, Cases After Verdict, rules 3, 11, 18 U.S.C.; 18 U.S.C. § 2101. Brodie v. Young, 133 F.2d 406, 1943 U.S. App. LEXIS 3820 (1943).

In general.

One who wrote letters to chief of police and police captain complaining that a policeman was dishonest was not entitled to absolute privilege with respect to such communications

on any theory that as they were allegedly written in response to publicity concerning top-level efforts to eliminate corrupt influences from department, they might become basis for preferment of written charges before police trial board which was quasi-judicial tribunal and consequently were analogous to pleadings and affidavits in case at law. D.C. Code 1951, Tit. 1 Appendix, Reorganization Order No. 48, pts. 2, 5, subd. b; §§ 4-121, 4-122. Sowder v. Nolan, 125 A.2d 52, 1956 D.C. App. LEXIS 219 (Cr.App. 1956).

Jurisdiction.

Where charges were filed against members of police force of District of Columbia on ground of conduct prejudicial to reputation, good order and discipline of police force, the police tribu-

nals had full jurisdiction. *Brodie v. Young*, 133 F.2d 406, 1943 U.S. App. LEXIS 3820 (1943).

Review.

Disciplinary proceeding before Metropolitan Police Special Trial Board wherein officer, who was charged with conduct unbecoming an officer and with untruthful statements in relation to his official duties, was determined to be guilty of one specification and was fined involved officer's tenure as an employee, and thus, under Administrative Procedure Act, Court of Appeals did not have jurisdiction to review decision whereby Commissioner of district approved findings and recommendation of Board. D.C. Code §§ 1-1501 to 1-1510, 1-1502(8), (8) (B), 4-121, 4-122. *Matala v. Washington*, 276 A.2d 126, 1971 D.C. App. LEXIS 301 (1971).

§ 5-133.07. Police surgeons. [Repealed].

Repealed.

(Sept. 10, 1992, D.C. Law 9-145, § 302(a), 39 DCR 4895.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-120.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 302(a) of Omnibus Budget Support Temporary Act of 1992 (D.C. Law 9-134, July 23, 1992, law notification 39 DCR 5815).

Emergency legislation. — For temporary repeal of section, see § 302(a) of the Omnibus Budget Support Emergency Act of 1992 (D.C. Act 9-203, April 29, 1992, 39 DCR 3219).

Legislative history of Law 9-145. — Law 9-145, the "Omnibus Budget Support Act of 1992," was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

§ 5-133.08. Chief of Police to make quarterly reports.

The Chief of Police shall make to the Mayor quarterly reports in writing of the state of the Police District, with such statistics and suggestions as he may deem advisable for the improvement of the police government and discipline of said District.

(R.S., D.C., § 346; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-63

Prior Codifications. — 1981 Ed., § 4-123. 1973 Ed., § 4-127.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.09. Exemption from military or jury duty, civil arrest or process.

No person holding office under this chapter shall be liable to military or jury duty, nor to arrest on civil process, nor to service of subpoenas from civil courts while actually on duty.

(R.S., D.C., § 353.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Military service, exemptions from, see § 49-402.

Prior Codifications. — 1981 Ed., § 4-124.
1973 Ed., § 4-128.

§ 5-133.10. Rewards, presents, fees or emoluments prohibited; exception; notice to Mayor required; failure to give notice.

(a) Neither the Mayor of the District of Columbia, nor any member of the Council of the District of Columbia or of the police force, shall receive or share in, for his own benefit, under any pretense whatever, any present, fee, or emolument, for police services, other than the regular salary and pay provided by law, except by consent of the Mayor.

(b) The Mayor, for meritorious and extraordinary services rendered by any member of the police force, in the due discharge of his duty, may permit such member to retain for his own benefit any reward or present tendered him therefor.

(c) Upon notice to the Mayor from any member of the police force, of the receipt by such member of any reward or present, the Mayor may order the member to retain the same, or shall dispose thereof for the benefit of the Policemen and Firemen's Relief Fund.

(d) It shall be cause of removal from the police force for any member to receive rewards or presents without giving notice of the same to the Mayor.

(R.S., D.C., §§ 357, 358, 359, 360; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12.)

Cross references. — Fugitives, apprehension of and payment of rewards, see § 24-201.27.

Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-125.
1973 Ed., § 4-129.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.11. Discriminating laws not to be enforced.

The said Mayor of the District of Columbia shall not enforce any law or ordinance discriminating between persons in the administration of justice.

(R.S., D.C., § 396; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

Prior Codifications. — 1981 Ed., § 4-139. 1973 Ed., § 4-139.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.12. Bonds.

The Mayor of the District of Columbia shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Council of the District of Columbia shall consider appropriate. The Mayor may obtain such bonds by negotiation, without regard to § 2-225.05 [repealed], and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any such bond may cover periods not exceeding 3 years and may be paid in advance.

(June 29, 1953, 67 Stat. 101, ch. 159, § 305(a); July 7, 1955, 69 Stat. 281, ch. 280, § 4.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-184. 1973 Ed., § 4-186.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(106) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 5-133.13. Mobile laboratory.

The Metropolitan Police force shall maintain and operate a motor vehicle equipped with cameras, photographic developing equipment, an electrical generator, floodlights, and such other equipment as may be necessary to permit the use of the vehicle as a mobile laboratory to handle evidence at the scenes of crimes and otherwise to aid in the prevention and detection of crime.

(June 29, 1953, 67 Stat. 101, ch. 159, § 307.)

Prior Codifications. — 1981 Ed., § 4-185. 1973 Ed., § 4-187.

§ 5-133.14. Expenditures for the prevention and detection of crime.

(a) The Chief of Police of the Metropolitan Police Department is authorized, with the approval of the Mayor of the District of Columbia and within the limits of appropriations therefor, to make expenditures for the prevention and detection of crime under his certificate. The certificate of the Chief of Police for such expenditures shall be deemed a sufficient voucher for the sum therein expressed to have been expended.

(b) Notwithstanding any other law, rule, or regulation, beginning in fiscal year 2007, the Chief of Police may issue grants to individuals or organizations from local funds for the prevention and detection of crime.

(c) The Chief of Police, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section.

(Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 9; Sept. 18, 2007, D.C. Law 17-20, § 3002, 54 DCR 7052.)

Prior Codifications. — 1981 Ed., § 4-186. 1973 Ed., § 4-188.

Effect of amendments. — D.C. Law 17-20 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3002 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 3001 of D.C. Law 17-20 provided that subtitle A of title III of the act may be cited as the “Metropolitan Police Department Grant-Making Authority Clarification Amendment Act of 2007”.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.15. Attendance at pistol matches.

The Mayor of the District of Columbia is authorized to pay the expenses of officers and members of the Metropolitan Police Department and the Department of Corrections for attending pistol matches, including entrance fees, and is further authorized to permit officers and members to attend such matches without loss of pay or time.

(Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 10.)

Prior Codifications. — 1981 Ed., § 4-187. 1973 Ed., § 4-189.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-133.16. Transfer of ammunition feeding devices prohibited.

Except as provided in § 7-2507.05, and § 22-4517, the Metropolitan Police Department shall not transfer any ammunition feeding device in its possession to any person or entity other than a law enforcement officer or governmental agency for law enforcement purposes.

(Sept. 22, 1995, D.C. Law 11-50, § 2, 42 DCR 3680.)

Prior Codifications. — 1981 Ed., § 4-191.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of (D.C. Law 11-35, September 8, 1995, law notification 42 DCR 5304).

Emergency legislation. — For temporary addition of section, see § 2 of the Prohibition on the Transfer of Firearms Emergency Act of 1995 (D.C. Act 11-58, May 18, 1995, 42 DCR 2574).

Legislative history of Law 11-50. — Law

11-50, the “Prohibition on the Transfer of Firearms Act of 1995,” was introduced in Council and assigned Bill No. 11-234, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 10, 1995, it was assigned Act No. 11-92 and transmitted to both Houses of Congress for its review. D.C. Law 11-50 became effective on September 22, 1995.

§ 5-133.17. Cooperative agreements between federal agencies and Metropolitan Police Department.

(a) *Agreements.* — Each covered Federal law enforcement agency may enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia to assist the Department in carrying out crime prevention and law enforcement activities in the District of Columbia, including taking appropriate action to enforce subsection (e) of this section [§ 22-1323; see Editor’s note] (except that nothing in such an agreement may be construed to grant authority to the United States to prosecute violations of subsection (e) of this section).

(b) *Contents of agreement.* — An agreement entered into between a covered

Federal law enforcement agency and the Metropolitan Police Department pursuant to this section may include agreements relating to:

(1) Sending personnel of the agency on patrol in areas of the District of Columbia which immediately surround the area of the agency's jurisdiction, and granting personnel of the agency the power to arrest in such areas;

(2) Sharing and donating equipment and supplies with the Metropolitan Police Department;

(3) Operating on shared radio frequencies with the Metropolitan Police Department;

(4) Permitting personnel of the agency to carry out processing and papering of suspects they arrest in the District of Columbia; and

(5) Such other items as the agency and the Metropolitan Police Department may agree to include in the agreement.

(c) *Coordination with U.S. Attorney's Office.* — Agreements entered into pursuant to this section shall be coordinated in advance with the United States Attorney for the District of Columbia.

(d) *Covered federal law enforcement agencies described.* — In this section, the term "covered federal law enforcement agency" means any of the following:

- (1) United States Capitol Police.
- (2) United States Marshals Service.
- (3) Library of Congress Police.
- (4) Bureau of Engraving and Printing Police Force.
- (5) Supreme Court Police.
- (6) Amtrak Police Department.
- (7) Department of Protective Services, United States Holocaust Museum.
- (8) Government Printing Office Police.
- (9) United States Park Police.
- (10) Bureau of Alcohol, Tobacco, and Firearms.
- (11) Drug Enforcement Administration.
- (12) Federal Bureau of Investigation.
- (13) Criminal Investigation Division, Internal Revenue Service.
- (14) Department of the Navy Police Division, Naval District Washington.
- (15) Naval Criminal Investigative Service.
- (16) 11th Security Police Squadron, Bolling Air Force Base.
- (17) United States Army Military District of Washington.
- (18) United States Customs Service.
- (19) Immigration and Naturalization Service.
- (20) Postal Inspection Service, United States Postal Service.
- (21) Uniformed Division, United States Secret Service.
- (22) United States Secret Service.
- (23) National Zoological Park Police.
- (24) Federal Protective Service, General Services Administration, National Capital Region.
- (25) Defense Protective Service, Department of Defense Washington Headquarters Services.
- (26) Office of Protective Services, Smithsonian Institution.
- (27) Office of Protective Services, National Gallery of Art.

(28) United States Army Criminal Investigation Command, Department of the Army Washington District, 3rd Military Police Group.

(29) Marine Corps Law Enforcement.

(30) Department of State Diplomatic Security.

(31) United States Coast Guard.

(32) United States Postal Police.

(33) Any other law enforcement agency of the Federal government that the Chief of the Metropolitan Police Department and the United States Attorney for the District of Columbia deem appropriate to enter into an agreement pursuant to this section.

(Aug. 5, 1997, 111 Stat. 782, Pub. L. 105-33, § 11712(a)-(d); Apr. 20, 1999, D.C. Law 12-264, § 16, 46 DCR 2118; Jan. 8, 2002, 115 Stat. 2099, Pub. L. 107-113, § 2.)

Prior Codifications. — 1981 Ed., § 4-192.

Effect of amendments. — Pub. L. 107-113 added subsec. (d)(33).

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998 respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Effective date. — Section 11721 of title XI of

Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

CASE NOTES

In general.

Statute providing that officers of the Secret Service Uniformed Division “shall possess privileges and powers similar to those of the members of the Metropolitan Police of the District of Columbia” does not require that Uniformed Division officers be assigned the same range of duties as Metropolitan Police officers, particu-

larly since Congress has specifically provided that such activities may be the subject of cooperative agreements between the Uniformed Division and the Metropolitan Police. 3 U.S.C. § 202; D.C. Code 1981, § 4-192. FOP, D.C. v. Rubin, 26 F.Supp.2d 133, 1998 U.S. Dist. LEXIS 17124 (1998).

§ 5-133.18. Proceeds from sales of excess vehicles.

Effective October 19, 2000, and notwithstanding any other provision of law, police vehicles purchased for the Metropolitan Police Department (“MPD”) which have been declared excess, either through age or mechanical faults, shall be auctioned, or otherwise disposed of by the MPD. Revenue not to exceed \$500,000 generated by auction or other means of disposal shall be returned to the MPD as Other Revenue, to be used expressly for the purchase of specialty replacement vehicles, including motorcycles. Any revenue in excess of \$500,000 shall revert to the General Fund.

(Oct. 19, 2000, D.C. Law 13-172, § 802, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 802 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-101.04.

§ 5-133.19. Regulations for use of video surveillance by Metropolitan Police Department.

(a) The Chief of Police, pursuant to subchapter I of Chapter 5 of Title 2, shall issue regulations pertaining to the Metropolitan Police Department's use of video surveillance cameras and technology in the operation of its Joint Operations Command Center/Synchronized Operations Command Center.

(b) The proposed regulations shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess.

(c) If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(Oct. 1, 2002, D.C. Law 14-190, § 2702, 49 DCR 6968.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Metropolitan Police Department Video Surveillance Regulations Temporary Act of 2002 (D.C. Law 14-158, June 25, 2002, law notification 49 DCR 6494).

Emergency legislation. — For temporary (90 day) addition of § 5-133.19, see § 2 of Metropolitan Police Department Video Surveillance Regulations Emergency Act of 2002 (D.C. Act 14-302, March 25, 2002, 49 DCR 3393).

For temporary (90 day) addition of § 5-133.19, see § 2602 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7,

2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Short title. — Short title of subtitle A of title XXVII of Law 14-190: Section 2701 of D.C. Law 14-190 provided that subtitle A of title XXVII of the act may be cited as the Metropolitan Police Department Video Surveillance Regulations Act of 2002.

Resolutions. — Resolution 14-609, the "Metropolitan Police Department Closed Circuit Television System Regulations Approval Resolution of 2002", was approved effective November 22, 2002.

Resolution 16-699, the "Metropolitan Police Department Closed Circuit Television System Regulations Amendment Disapproval

Resolution of 2006", was approved effective July 7, 2006.

§ 5-133.20. Procedures for electronic recording of interrogations. [Repealed].

Repealed.

(Apr. 4, 2003, D.C. Law 14-280, § 2, 50 DCR 886; Apr. 13, 2005, D.C. Law 15-351, § 201, 52 DCR 2275.)

Temporary Addition of Section. — For temporary (225 day) additions, see § 101 to 103 of Electronic Recording Procedures and Penalties Temporary Act of 2005 (D.C. Law 16-1, May 14, 2005, law notification 52 DCR 5424).

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 201 of Electronic Recording Procedures and Penalties Temporary Act of 2005 (D.C. Law 16-1, May 14, 2005, law notification 52 DCR 5424).

Emergency legislation. — For temporary (90 day) addition, see § 101 of Electronic Recording Procedures and Penalties Emergency Act of 2005 (D.C. Act 16-41, February 17, 2005, 52 DCR 3042).

For temporary (90 day) repeal of section, see § 201 of Electronic Recording Procedures and Penalties Emergency Act of 2005 (D.C. Act 16-41, February 17, 2005, 52 DCR 3042).

Legislative history of Law 14-280. — Law

14-280, the “Electronic Recording Procedures Act of 2002”, was introduced in Council and assigned Bill No. 14-3, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-613 and transmitted to both Houses of Congress for its review. D.C. Law 14-280 became effective on April 4, 2003.

§ 5-133.21. Motor vehicle theft prevention teams.

(a) For the purpose of this section, the term “motor vehicle” means any automobile, motorcycle, truck, truck tractor, truck tractor with semitrailer or trailer, or bus.

(b) The Metropolitan Police Department shall have no fewer than 3 teams, comprised of no fewer than 3 officers each, whose primary responsibilities are the prevention of motor vehicle theft and the recovery of stolen motor vehicles.

(Dec. 7, 2004, D.C. Law 15-205, § 3602, 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 3602 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 3602 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 5-133.04.

Short title. — Short title of subtitle F of title III of Law 15-205: Section 3601 of D.C. Law 15-205 provided that subtitle F of title III of the act may be cited as the Prevention of Auto Theft and Reckless Driving Act of 2004.

CHAPTER 2. UNITED STATES PARK POLICE.

Sec.

5-201. United States watchmen to be known as United States Park Police; powers and duties.

5-202. Organization.

5-203. Equipment; extra compensation.

5-204. Medical attendance.

Sec.

5-205. Special police.

5-206. Arrests and execution of process on federal reservations in District.

5-207. Rules and regulations.

5-208. Environs of the District of Columbia defined.

§ 5-201. United States watchmen to be known as United States Park Police; powers and duties.

The watchmen provided by the United States government for service in any of the public squares and reservations in the District of Columbia shall, after August 5, 1882, be known as the "United States Park Police." They shall have and perform the same powers and duties as the Metropolitan Police of the District.

(Aug. 5, 1882, 22 Stat. 243, ch. 389, § 1; Dec. 5, 1919, 41 Stat. 364, ch. 1, § 3.)

Prior Codifications. — 1981 Ed., § 4-201. 1973 Ed., § 4-201.

CASE NOTES

ANALYSIS

Immunity from liability.

In general.

Jurisdiction.

Immunity from liability.

United States Park Police officers were not entitled to absolute immunity from liability on arrestees' common-law tort claims, arising from officers' allegedly tortious conduct in effecting arrests in their District of Columbia law enforcement capacity, but rather were entitled to qualified immunity. D.C. Code 1981, § 4-201; 16 U.S.C. § 1a-6(b)(2). *Martin v. Malhoyt*, 830 F.2d 237, 1987 U.S. App. LEXIS 13267 (C.A.D.C. 1987).

In general.

Congress has granted United States Park Police independent authority to patrol and make arrests anywhere within District of Columbia. D.C. Code 1981, § 4-201. *Estate of Carter v. District of Columbia*, 903 F. Supp. 165, 1995 U.S. Dist. LEXIS 16830 (1995).

Alleged cooperation agreement by which District of Columbia undertook to have United States Park Police patrol areas normally patrolled by Metropolitan Police Department was insufficient to impose liability, under borrowed servant doctrine, against District of Columbia on theory that District violated arrestee's Fourth and Fifth Amendment rights by failing to properly train and supervise officers who

shot arrestee in chase, leading to his death; agreement did not alter jurisdiction or responsibilities of Park Police officers patrolling those areas, officers continued to perform duties entrusted them by their general employer, and there was no division of control or authority that would have permitted District to order officers to act to arrest someone or to veto their actions. U.S.C. Const. Amends. 4, 5; 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-201, 4-202. *Estate of Carter v. District of Columbia*, 903 F. Supp. 165, 1995 U.S. Dist. LEXIS 16830 (1995).

Jurisdiction.

In prosecution for falsely pretending to be a member of District of Columbia Metropolitan Police, fact that scene of impersonation was in park subject to jurisdiction of United States Park Police did not establish a fatal variance under Code sections granting Metropolitan Police and Park Police concurrent jurisdiction over United States Parks within District of Columbia. D.C. Code 1940, §§ 4-120, 4-201. *Taylor v. U.S.*, 167 F.2d 752, 1948 U.S. App. LEXIS 2493 (1948).

United States park police has concurrent jurisdiction with metropolitan police department within the District of Columbia, and thus the park police is authorized to operate in the District of Columbia outside of the parks themselves. Act July 31, 1876, 19 Stat. 102; Act March 17, 1948, § 1 et seq., 62 Stat. 81; Act Oct. 7, 1976, § 1 et seq., 90 Stat. 1939; D.C. Code 1981, §§ 4-201, 4-205. *United States v.*

Alatishe, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

United States park police officers had jurisdiction to make arrests anywhere in the District of Columbia, and therefore had authority to legally arrest defendant even though such arrest took place outside of park or federal

reservation. D.C. Code 1981, § 4-201. *Richardson v. United States*, 520 A.2d 692, 1987 D.C. App. LEXIS 312 (1987), writ of certiorari denied by 484 U.S. 917, 108 S. Ct. 267, 98 L. Ed. 2d 224, 1987 U.S. LEXIS 4375, 56 U.S.L.W. 3289 (1987).

§ 5-202. Organization.

The United States Park Police shall be under the exclusive charge and control of the Director of the National Park Service. It shall consist of an active officer of the United States Army, detailed by the Department of the Army, 1 lieutenant with grade corresponding to that of lieutenant (Metropolitan Police), 1 first sergeant, 5 sergeants with grade corresponding to that of sergeant (Metropolitan Police), and 54 privates, all of whom shall have served 3 years to be with grade corresponding to private, class 3 (Metropolitan Police); all of whom shall have served 1 year to be with grade corresponding to private, class 2 (Metropolitan Police) and such others as the Director of the National Park Service deems necessary and are appropriated for by Congress; and all of whom shall have served less than 1 year to be with grade corresponding to private, class 1 (Metropolitan Police).

(May 27, 1924, 43 Stat. 175, ch. 199, § 4; Feb. 26, 1925, 43 Stat. 983, ch. 339; July 3, 1926, 44 Stat. 834, ch. 760, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

Prior Codifications. — 1981 Ed., § 4-202.

1973 Ed., § 4-202.

CASE NOTES

In general.

Alleged cooperation agreement by which District of Columbia undertook to have United States Park Police patrol areas normally patrolled by Metropolitan Police Department was insufficient to impose liability, under borrowed servant doctrine, against District of Columbia on theory that District violated arrestee's Fourth and Fifth Amendment rights by failing to properly train and supervise officers who shot arrestee in chase, leading to his death;

agreement did not alter jurisdiction or responsibilities of Park Police officers patrolling those areas, officers continued to perform duties entrusted them by their general employer, and there was no division of control or authority that would have permitted District to order officers to act to arrest someone or to veto their actions. U.S.C. Const.Amend. 4, 5; 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-201, 4-202. *Estate of Carter v. District of Columbia*, 903 F. Supp. 165, 1995 U.S. Dist. LEXIS 16830 (1995).

§ 5-203. Equipment; extra compensation.

The members of the United States Park Police force shall be furnished with uniforms, means of transportation, and such other equipment as may be necessary for the proper performance of their duties, including badges, revolvers, and ammunition; the United States Army officer detailed as Superintendent of the United States Park Police, who shall use on official business motor transportation furnished and maintained by himself, shall receive an extra compensation of not to exceed \$480 per annum. Members detailed to motorcycle service shall each receive an extra compensation of \$120 per annum.

(May 27, 1924, 43 Stat. 175, ch. 199, § 6.)

Prior Codifications. — 1981 Ed., § 4-203. 1973 Ed., § 4-204.

Editor's notes. — Appropriations for uniforms or allowances: Section 105 of Pub. L. 105-83, 111 Stat. 1561, provided that appropri-

ations available to the Department of the Interior for salaries and expenses shall be available for uniforms or allowances therefor, as authorized by this section.

§ 5-204. Medical attendance.

The park watchmen on April 28, 1902, provided by law and those that may thereafter be provided for by law for service in any of the public squares and reservations in the District of Columbia, shall receive free medical attendance, the same as the Metropolitan Police of said District.

(Apr. 28, 1902, 32 Stat. 152, ch. 594.)

Prior Codifications. — 1981 Ed., § 4-204. 1973 Ed., § 4-206.

§ 5-205. Special police.

The Director of the National Park Service, in his discretion, may appoint special policemen, without compensation, for duty in connection with the policing of the public parks and other reservations under his jurisdiction within the District of Columbia, such special policemen to have the same powers and perform the same duties as the United States Park Police and Metropolitan Police of said District of Columbia, and to be subject to such regulations as he may prescribe; provided, that the jurisdiction and police power of such special policemen shall be restricted to the public parks and other reservations under the control of the Director of the National Park Service.

(May 27, 1924, 43 Stat. 176, ch. 199, § 9; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

Prior Codifications. — 1981 Ed., § 4-205. 1973 Ed., § 4-208.

CASE NOTES

In general.

United States park police has concurrent jurisdiction with metropolitan police department within the District of Columbia, and thus the park police is authorized to operate in the District of Columbia outside of the parks themselves. Act July 31, 1876, 19 Stat. 102; Act March 17, 1948, § 1 et seq., 62 Stat. 81; Act Oct. 7, 1976, § 1 et seq., 90 Stat. 1939; D.C. Code 1981, §§ 4-201, 4-205. *United States v. Alatishe*, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

United States park police officers had jurisdiction to make arrests anywhere in the District of Columbia, and therefore had authority to legally arrest defendant even though such arrest took place outside of park or federal reservation. D.C. Code 1981, § 4-201. *Richardson v. United States*, 520 A.2d 692, 1987 D.C. App. LEXIS 312 (1987), writ of certiorari denied by 484 U.S. 917, 108 S. Ct. 267, 98 L. Ed. 2d 224, 1987 U.S. LEXIS 4375, 56 U.S.L.W. 3289 (1987).

§ 5-206. Arrests and execution of process on federal reservations in District.

On and within roads, parks, parkways, and other federal reservations in the environs of the District of Columbia, the several members of the United States Park Police force shall have the power and authority to make arrests without warrant for any felony or misdemeanor committed in the presence or view of such members in violation of any federal law or regulation issued pursuant to law, or for any felony that in fact has been or is being committed in violation of any such law or regulation where they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony, and shall have power to take any person arrested by them, without unnecessary delay, before the federal court having jurisdiction over the offense or before a United States Magistrate specifically designated to try and sentence persons charged with petty offenses as provided in the Act of October 9, 1940 (54 Stat. 1058), or before any other officer having authority to hold or commit for the offense. Such police officers shall also have power upon such roads and within such parks, parkways, and other reservations to execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any federal law or regulation issued pursuant to law; provided, that the power and authority herein granted shall not extend to military personnel for offenses committed on military reservations; provided further, that the power and authority herein granted shall not limit or restrict the investigative jurisdiction of the Federal Bureau of Investigation.

(Mar. 17, 1948, 62 Stat. 81, ch. 136, § 1; Aug. 18, 1970, 84 Stat. 826, Pub. L. 91-383, § 4.)

Cross references. — Arrests, Dulles and National Airports, see §§ 9-704 and 9-808.

Arrests, warrantless, see § 23-581.

Section references. — This section is referred to in § 5-208.

Prior Codifications. — 1981 Ed., § 4-206.
1973 Ed., § 4-209.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established

in place thereof the Office of United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court, dated June 20, 1969.

The Act of October 9, 1940 (54 Stat. 1058), referred to near the end of the first sentence of this section, was repealed by the Act of June 25, 1948, 62 Stat. 868, ch. 645.

§ 5-207. Rules and regulations.

The Secretary of the Interior, with the approval or concurrence of the head of the agency having jurisdiction or control of any road, park, parkway, or other federal reservation, or his duly authorized representative, is hereby authorized to make all needful rules and regulations for the regulation of traffic, for the protection of persons, property, health, and morals, to prevent breaches of the peace, to suppress affrays and unlawful assemblies and to aid in the enforcement of any of the rules and regulations so promulgated. To any rule or regulation there may be attached a reasonable penalty for the violation thereof not exceeding, however, a fine of not more than \$500, imprisonment for not exceeding 6 months, or both.

(Mar. 17, 1948, 62 Stat. 81, ch. 136, § 2.)

Section references. — This section is referred to in § 5-208.

Prior Codifications. — 1981 Ed., § 4-207. 1973 Ed., § 4-210.

CASE NOTES

ANALYSIS

Constitutional rights, generally.
First amendment rights.

In general.
Jurisdiction.
Permits.
Review.
Waiver.

Constitutional rights, generally.

Ordinance which makes peaceful enjoyment of freedoms guaranteed by Constitution contingent upon uncontrolled will of an official, as by requiring a permit or license which may be granted or withheld in official's discretion, is an unconstitutional censorship or private restraint upon enjoyment of such freedoms. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

First amendment rights.

Expressive conduct is subject both to contemporaneous and to prior restraint under certain circumstances. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Restrictions on expression are valid if the regulation furthers an important or substantial governmental interest, the governmental interest is unrelated to suppression of free expression, and the incidental restriction on alleged First Amendment rights is not greater than is essential to the furtherance of that interest. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Conduct that creates a danger to life and property or that is destructive of the public order may be checked by authorities without violating the First Amendment. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

When the First Amendment rights of demonstrators compete with other legitimate interests, the government may develop a system of restraints, on the otherwise protected conduct, that attempts to accommodate these various competing interests. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

When the First Amendment rights of demonstrators compete with other legitimate interests, the proper course of government lies in

balancing the First Amendment rights against the other legitimate interests to arrive at a reconciliation that is both constitutional and an acceptable accommodation of all the factors and in constructing a scheme that does not risk abuse of First Amendment rights through a broad censorship power or other improper application of theoretically acceptable restraints. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

A permit system for use of National Park property in the District of Columbia, including the White House sidewalk, Lafayette Park and the Ellipse, is basically a constitutional prior restraint on First Amendment activity. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

The security of the President and the White House and the allocation of the scarce time and space resources in the White House area among competing applicants constitute a legitimate governmental interest which would justify some prior restraint on First Amendment activity in the White House area. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

The White House sidewalk, Lafayette Park and the Ellipse constitute a unique site for exercise of First Amendment rights and deference cannot be accorded by the courts to an executive approach to use of the White House sidewalk that is rooted in a bias against expressive conduct. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Provisions of the permit system adopted by the Department of Interior National Park Service for demonstrations in the White House area must be enforced uniformly and without discrimination and so that there will be no deviation from the regulation's language that works an abridgment of communication by the applicant group. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

In promulgating the constitutionally valid permit system for use of the White House area, the National Park System must define "public gathering" in terms that do not impermissibly discriminate against First Amendment activity; the Park Service may avoid unwieldy administrative burdens by exemptions from the

permit requirement of groups of less than a specified size. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

In general.

National Park Service regulations which prohibit public gatherings at the White House sidewalk and Lafayette Park during morning and evening rush hours and which prohibit the use of sound amplification equipment on the White House sidewalk, except in connection with crowd control, are reasonable. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Provision of National Park Service regulation which prohibits the issuance of a White House area demonstration permit for a period of more than seven consecutive days or for any public gathering having a duration of more than 24 consecutive hours was invalid. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

In the event the National Park Service should discover information leading to reasonable belief that a planned public gathering for which it has issued or been deemed to have issued a permit will pose a serious security threat to the President or to the White House, it may exercise an emergency right to withdraw its previously given approval. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

There is no warrant for the 3,000 person figure set for Lafayette Park and, although there is substantially greater warrant for the 750 person limit for the White House sidewalk, neither figure may be maintained by the park service as a rigid and absolute limitation. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Jurisdiction.

Court of Appeals, on appeal from district court order of November 21, 1975, did not have jurisdiction to consider claims challenging Interior Department National Park Service regulations that issued in March, 1976 pursuant to a notice of December, 1975. *Quaker Action Group v. Andrus*, 559 F.2d 716, 1977 U.S. App. LEXIS 13717 (C.A.D.C. 1977).

Permits.

In view of the uniqueness and importance of the security interest of protection of the White House as justifying a greater limitation than would be applicable generally to use of public

streets and parks, National Park Service regulation which authorizes denial of permit if it reasonably appears that the proposed public gathering will present a clear and present danger to the public safety, good order, or health is not vague and overbroad. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Requirement of National Park Service regulation pertaining to demonstrations in the White House area that applicants must apply for a permit at least 48 hours in advance of a planned public gathering was reasonable but the regulation must be revised to provide explicitly that a permit application not acted upon when the administrative deadline has expired is to be deemed granted. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

The National Park Service must require a permit for every public gathering in areas for which a permit is required; it may not exempt "NPS events" which are sponsored or cosponsored by the National Park Service itself. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Review.

Where district court based its determination that the Department of Interior regulations governing demonstrations on the White House sidewalk and in Lafayette Park were reasonable upon factual evidence adduced at a trial, Court of Appeals would have no warrant for reversal unless it discerned clear error in the district court's findings of fact or a mistake in its legal approach. U.S. Const. Amend. 1. *Quaker Action Group v. Morton*, 516 F.2d 717, 1975 U.S. App. LEXIS 16439 (C.A.D.C. 1975).

Waiver.

District court's order, correctly interpreted, required construction that 750 person limitation on White House sidewalk demonstrations may be waived by Secretary of Interior and, in event of refusal, by the district court. *Quaker Action Group v. Andrus*, 559 F.2d 716, 1977 U.S. App. LEXIS 13717 (C.A.D.C. 1977).

The establishment of a waiver procedure for numerical limitation for gatherings at Lafayette Park, and its effectiveness for a reasonable period of time, was sufficient reason for Secretary of Interior to give consideration to a like waiver for White House sidewalk, even assuming that no waivers for use of the Park have been granted. *Quaker Action Group v. Andrus*, 559 F.2d 716, 1977 U.S. App. LEXIS 13717 (C.A.D.C. 1977).

§ 5-208. Environs of the District of Columbia defined.

For the purposes of §§ 5-206 to 5-208, the environs of the District of Columbia are hereby defined as embracing Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia, and Prince George's, Charles, Anne Arundel, and Montgomery Counties in Maryland.

(Mar. 17, 1948, 62 Stat. 81, ch. 136, § 3; Aug. 18, 1970, 84 Stat. 826, Pub. L. 91-383, § 4.)

Prior Codifications. — 1981 Ed., § 4-208. 1973 Ed., § 4-211.

CHAPTER 3. FEDERAL LAW ENFORCEMENT OFFICER COOPERATION WITH
METROPOLITAN POLICE DEPARTMENT.

Sec.

5-301. Powers and duties of federal law enforcement officers when making arrests for nonfederal offenses.

5-302. Restrictions on powers and duties of federal law enforcement officers.

Sec.

5-303. Public information program; priority at the scene.

§ 5-301. Powers and duties of federal law enforcement officers when making arrests for nonfederal offenses.

(a) When a federal law enforcement agency has entered into a cooperative agreement with the Metropolitan Police Department of the District of Columbia ("MPD") to assist the Department in carrying out crime prevention and law enforcement activities pursuant to § 5-133.17, a sworn federal law enforcement officer of a covered federal law enforcement agency as defined in § 5-133.17(d) ("federal officer"), who in his official capacity is authorized to make arrests, shall, when making an arrest in the District of Columbia for a nonfederal offense, have the same legal status and immunity from suit as an MPD officer if the arrest is made under the following circumstances:

(1) The federal officer has probable cause to believe that the person arrested has committed a felony;

(2) The federal officer reasonably believes that the person arrested has committed a misdemeanor in his presence; or

(3) The federal officer is rendering assistance to an MPD officer in an emergency at the request of that MPD officer.

(b) A sworn federal law enforcement officer of a covered federal law enforcement agency as defined in § 5-133.17(d), who in his official capacity is authorized to make arrests, may be authorized by the covered federal law enforcement agency to carry weapons within the boundaries of the District of Columbia while in an off-duty status provided that:

(1) The cooperative agreement authorizes the federal officer to carry weapons while in an off-duty status; and

(2) The federal officer has training substantially similar to the weapons training requirements of the MPD.

(May 9, 2000, D.C. Law 13-100, § 2, 46 DCR 794.)

Legislative history of Law 13-100. — Law 13-100, the "Federal Law Enforcement Officer Cooperation Act of 1999," was introduced in Council and assigned Bill No. 13-302, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second read-

ings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-246 and transmitted to both Houses of Congress for its review. D.C. Law 13-100 became effective on May 9, 2000.

§ 5-302. Restrictions on powers and duties of federal law enforcement officers.

Officers when acting under the authority granted in § 5-301(a) shall be subject to the restrictions imposed on MPD officers under the laws codified in Chapter 1 of this title. These restrictions include, but are not limited to, arrests under § 5-115.01, use of unnecessary or wanton force under § 5-123.02, and the use of trachea and carotid artery holds under §§ 5-125.02 and 5-125.03.

(May 9, 2000, D.C. Law 13-100, § 3, 46 DCR 794.)

Legislative history of Law 13-100. — For Law 13-100, see notes following § 5-301.

§ 5-303. Public information program; priority at the scene.

(a) The Chief of Police shall establish a continuing public information program to inform the public, at a minimum, of which police agencies located in the District of Columbia have authority to make arrests anywhere in the District.

(b) Any cooperative agreement with a federal law enforcement agency shall include procedures that establish clearly which agency has priority at the scene. In addition, before entering into a cooperative agreement, the Chief of Police shall make a finding as to:

(1) Whether misconduct by the federal officers should be covered by the Police Complaint Board; and

(2) Whether the public information program should be supplemented to inform the public of information concerning the specific cooperative agreement, and if so, how.

(May 9, 2000, D.C. Law 13-100, § 4, 46 DCR 794; Mar. 2, 2007, D.C. Law 16-191, § 25, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (b)(1), substituted “Police Complaint Board” for “Citizen Complaint Review Board ”

Legislative history of Law 13-100. — For Law 13-100, see notes following § 5-301.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

CHAPTER 3A. FIRST AMENDMENT RIGHTS AND POLICE STANDARDS.

Subchapter I. First Amendment Assemblies

Sec.

- 5-331.01. Short title.
- 5-331.02. Definitions.
- 5-331.03. Policy on First Amendment assemblies.
- 5-331.04. Reasonable time, place, and manner restrictions on First Amendment assemblies.
- 5-331.05. Notice and plan approval process for First Amendment assemblies — Generally.
- 5-331.06. Notice and plan approval process for First Amendment assemblies — Processing applications — Appeals — Rules.
- 5-331.07. Police handling and response to First Amendment assemblies.
- 5-331.08. Use of police lines.
- 5-331.09. Identification of MPD personnel policing First Amendment assemblies.
- 5-331.10. Documentation of arrests in connection with a First Amendment assembly.
- 5-331.11. Use of handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly.
- 5-331.12. Prompt release of persons arrested in connection with a First Amendment assembly.
- 5-331.13. Notice to persons arrested in connection with a First Amendment assembly of their release options.
- 5-331.14. Police-media relations.
- 5-331.15. Training for handling of, and response to, First Amendment assemblies.

Sec.

- 5-331.16. Use of riot gear and riot tactics at First Amendment assemblies.
- 5-331.17. Construction.

Subchapter II. Police Investigations.

- 5-333.01. Short title.
- 5-333.02. Definitions.
- 5-333.03. Purpose; scope.
- 5-333.04. Policy on investigations and inquiries involving First Amendment activities.
- 5-333.05. Authorization for investigations involving First Amendment activities.
- 5-333.06. Authorization for preliminary inquiries involving First Amendment activities.
- 5-333.07. Techniques and procedures for investigations and preliminary inquiries.
- 5-333.08. Rules for investigations and preliminary inquiries.
- 5-333.09. Preliminary inquiries relating to First Amendment assemblies.
- 5-333.10. Authorized public activities.
- 5-333.11. Files and records.
- 5-333.12. Monitoring and auditing of investigations and preliminary inquiries.
- 5-333.13. Construction.

Subchapter III. Post-and-Forfeiture Procedure

- 5-335.01. Enforcement of the post-and-forfeit procedure.

Subchapter IV. Police Identifying Information

- 5-337.01. Police identifying information.

Subchapter I. First Amendment Assemblies.

§ 5-331.01. Short title.

This subchapter may be cited as the “First Amendment Assemblies Act of 2004”.

(Apr. 13, 2005, D.C. Law 15-352, § 101, 52 DCR 2296.)

Legislative history of Law 15-352. — Law 15-352, the “First Amendment Rights and Police Standards Act of 2004”, was introduced in Council and assigned Bill No. 15-968 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings

on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 27, 2005, it was assigned Act No. 15-757 and transmitted to both Houses of Congress for its review. D.C. Law 15-352 became effective on April 13, 2005.

§ 5-331.02. Definitions.

For the purposes of this subchapter, the term:

(1) “First Amendment assembly” means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views.

(2) “MPD” means the Metropolitan Police Department.

(Apr. 13, 2005, D.C. Law 15-352, § 102, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.03. Policy on First Amendment assemblies.

It is the declared public policy of the District of Columbia that persons and groups have a right to organize and participate in peaceful First Amendment assemblies on the streets, sidewalks, and other public ways, and in the parks of the District of Columbia, and to engage in First Amendment assembly near the object of their protest so they may be seen and heard, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in the assemblies to use the streets, sidewalks, and other public ways to travel to their intended destinations, and use the parks for recreational purposes.

(Apr. 13, 2005, D.C. Law 15-352, § 103, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

CASE NOTES

ANALYSIS

Construction and application.
Vendors.

Construction and application.

Police department’s refusal to permit demonstrators to engage in “chalk art” demonstrations on public promenade directly in front of the White House did not violate District of Columbia First Amendment Rights and Police Standards Act (FARPSA), which mandated that police department account for the protection of property when imposing time, place, and manner restrictions during the assembly approval process. *Mahoney v. District of Columbia*, 662 F.Supp.2d 74, 2009 U.S. Dist. LEXIS 90231

(2009), affirmed by 642 F.3d 1112, 395 U.S. App. D.C. 291, 2011 U.S. App. LEXIS 12478 (2011).

Vendors.

Street vendor’s button sales on public sidewalks in downtown areas of District of Columbia did not constitute First Amendment “assembly” within meaning of First Amendment Assemblies Act, as would exempt vendor from District’s vending and permitting requirements; vendor, as a single person, could not be a “gathering” or an “assembly” as defined by act, vendor’s actions did not involve a protest, and sales of buttons were not demonstration-related. *Enten v. Dist. of Columbia*, 675 F.Supp.2d 42, 2009 U.S. Dist. LEXIS 118983 (2009).

§ 5-331.04. Reasonable time, place, and manner restrictions on First Amendment assemblies.

(a) The MPD shall recognize and implement the District policy on First Amendment assemblies established in § 5-331.03 when enforcing any restric-

tions on First Amendment assemblies held on District streets, sidewalks, or other public ways, or in District parks.

(b) The MPD may enforce reasonable time, place, and manner restrictions on First Amendment assemblies by:

(1) Establishing reasonable restrictions on a proposed assembly prior to its planned occurrence though the approval of a plan, where the organizers of the assembly give notice;

(2) Enforcing reasonable restrictions during the occurrence of an assembly for which a plan has been approved, which are in addition to the restrictions set forth in the approved plan, where the additional restrictions are:

(A) Ancillary to the restrictions set forth in the approved plan and are designed to implement the substance and intent in the approval of the plan;

(B) Enforced in response to the occurrence of actions or events unrelated to the assembly that were not anticipated at the time of the approval of the plan and that were not caused by the plan-holder, counter-demonstrators, or the police; or

(C) Enforced to address a determination by the MPD during the pendency of the assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or

(3) Enforcing reasonable restrictions on a First Amendment assembly during its occurrence where a plan was not approved for the assembly.

(c) No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favor non-First Amendment activities over First Amendment activities.

(Apr. 13, 2005, D.C. Law 15-352, § 104, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.05. Notice and plan approval process for First Amendment assemblies — Generally.

(a) It shall not be an offense to assemble or parade on a District street, sidewalk, or other public way, or in a District park, without having provided notice or obtained an approved assembly plan.

(b) The purpose of the notice and plan approval process is to avoid situations where more than one group seeks to use the same space at the same time and to provide the MPD and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.

(c) Except as provided in subsection (d) of this section, a person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall give notice and apply for approval of an assembly plan before conducting the assembly.

(d) A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where:

(1) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks;

(2) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or

(3) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.

(e) The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies.

(f) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, or other District officials or agencies, as a prerequisite for making or delivering an address, speech, or sermon regarding any political, social, or religious subject in any District street, sidewalk, other public way, or park.

(g) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from the Chief of Police, the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for using a stand or structure in connection with such an assembly; provided, that a First Amendment assembly plan may contain limits on the nature, size, or number of stands or structures to be used as required to maintain public safety. Individuals conducting a First Amendment assembly under subsection (d) of this section may use a stand or structure so long as it does not prevent others from using the sidewalk.

(h) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, the Director of the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for selling demonstration-related merchandise within an area covered by an approved plan or within an assembly covered by subsection (d) of this section; provided, that nothing in this subsection shall be construed to authorize any person to sell merchandise in a plan-approved area contrary to the wishes of the plan-holder.

(Apr. 13, 2005, D.C. Law 15-352, § 105, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.06. Notice and plan approval process for First Amendment assemblies — Processing applications — Appeals — Rules.

(a)(1) Subject to the appeal process set forth in subsection (d) of this section, the authority to receive and review a notice of and an application for approval of a plan for a First Amendment assembly on District streets, sidewalks, and other public ways, and in District parks, and to grant, deny, or revoke an assembly plan, is vested exclusively with the Chief of Police or his or her designee.

(2) Persons or groups providing notice to and applying for approval of a plan from the District government to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall not be required to obtain approval for the assembly from any other official, agency, or entity in the District government, including the Homeland Security and Emergency Management Agency, the Mayor's Special Events Task Group, or the Department of Parks and Recreation.

(b)(1) The Chief of Police shall take final action on a notice of and an application for approval of a plan for a First Amendment assembly within a reasonably prompt period of time following receipt of the completed application, considering such factors as the anticipated size of the assembly, the proposed date and location, and the number of days between the application date and the proposed assembly date, and shall establish specific timetables for processing an application by rules issued pursuant to subsection (e) of this section.

(2) Except as provided in paragraph (3) of this subsection, where a complete application for approval of a First Amendment assembly plan is filed 60 days or more prior to the proposed assembly date, the application shall receive final action no later than 30 days prior to the proposed assembly.

(3) Following the approval of an assembly plan in response to an application pursuant to paragraph (2) of this subsection, the Chief of Police may, after consultations with the person or group giving notice of the assembly, amend the plan to make reasonable modifications to the assembly location or route up until 10 days prior to the assembly date based on considerations of public safety.

(c) The Chief of Police shall inform the person or group giving notice of an assembly, in writing, of the reasons for any decision to:

- (1) Deny an application for approval of a First Amendment assembly plan;
- (2) Revoke an assembly plan prior to the date of the planned assembly; or
- (3) Approve an assembly plan subject to time, place, or manner restrictions that the applicant has advised the Chief of Police are objectionable to the applicant.

(d)(1) Any applicant whose proposed assembly plan has been denied, revoked prior to the date of the planned assembly, or granted subject to time, place, or manner restrictions deemed objectionable by the applicant, may appeal such decision to the Mayor or the Mayor's designee, who shall concur with, modify, or overrule the decision of the Chief of Police.

(2) The Mayor shall make a decision on appeal expeditiously and prior to the date and time the assembly is planned to commence, and shall explain in writing the reasons for the decision.

(e)(1) Within 90 days of April 13, 2005, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, and in accordance with this subchapter, shall issue rules governing the approval of plans to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks.

(2) Existing procedures for the issuance of permits to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks, that are not inconsistent with this subchapter shall remain in effect pending the issuance of the rules promulgated under paragraph (1) of this subsection.

(Apr. 13, 2005, D.C. Law 15-352, § 106, 52 DCR 2296; Mar. 14, 2007, D.C. Law 16-262, § 406, 54 DCR 794.)

Effect of amendments. — D.C. Law 16-262, in subsec. (a)(2), substituted “Homeland Security and Emergency Management Agency” for “District of Columbia Emergency Management Agency”.

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and

December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

Delegation of Authority. — Delegation of Mayor’s Rulemaking Authority under Section 106(e)(1) of the First Amendment and Police Standards Act, see Mayor’s Order 2006-37, March 17, 2006 (53 DCR 5077).

Delegation of Authority-City Administrator, see Mayor’s Order 2006-108, August 11, 2006 (53 DCR 7301).

§ 5-331.07. Police handling and response to First Amendment assemblies.

(a) The MPD’s handling of, and response to, all First Amendment assemblies shall be designed and implemented to carry out the District policy on First Amendment assemblies established in § 5-331.03.

(b)(1) Where participants in a First Amendment assembly fail to comply with reasonable time, place, and manner restrictions, the MPD shall, to the extent reasonably possible, first seek to enforce the restrictions through voluntary compliance and then seek, as appropriate, to enforce the restrictions by issuing citations to, or by arresting, the specific non-compliant persons, where probable cause to issue a citation or to arrest is present.

(2) Nothing in this subsection is intended to restrict the authority of the MPD to arrest persons who engage in unlawful disorderly conduct, or violence directed at persons or property.

(c) Where participants in a First Amendment assembly, or other persons at the location of the assembly, engage in unlawful disorderly conduct, violence toward persons or property, or unlawfully threaten violence, the MPD shall, to the extent reasonably possible, respond by dispersing, controlling, or arresting

the persons engaging in such conduct, and not by issuing a general order to disperse, thus allowing the First Amendment assembly to continue.

(d) The MPD shall not issue a general order to disperse to participants in a First Amendment assembly except where:

(1) A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;

(2) A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or

(3) A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the First Amendment assembly be dispersed.

(e)(1) If and when the MPD determines that a First Amendment assembly, or part thereof, should be dispersed, the MPD shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.

(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.

(f)(1) Where a First Amendment assembly is held on a District street, sidewalk, or other public way, or in a District park, and an assembly plan has not been approved, the MPD shall, consistent with the interests of public safety, seek to respond to and handle the assembly in substantially the same manner as it responds to and handles assemblies with approved plans.

(2) An order to disperse or arrest assembly participants shall not be based solely on the fact that a plan has not been approved for the assembly.

(3) When responding to and handling a First Amendment assembly for which a plan has not been approved, the MPD may take into account any actual diminution, caused by the lack of advance notice, in its ability, or the ability of other governmental agencies, appropriately to organize and allocate their personnel and resources so as to protect the rights of both persons exercising free speech and other persons wishing to use the streets, sidewalks, other public ways, and parks.

(Apr. 13, 2005, D.C. Law 15-352, § 107, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.08. Use of police lines.

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.

(Apr. 13, 2005, D.C. Law 15-352, § 108, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.09. Identification of MPD personnel policing First Amendment assemblies.

The MPD shall implement a method for enhancing the visibility to the public of the name or badge number of officers policing a First Amendment assembly by modifying the manner in which those officers' names or badge numbers are affixed to the officers' uniforms or helmets. The MPD shall ensure that all uniformed officers assigned to police First Amendment assemblies are equipped with the enhanced identification and may be identified even if wearing riot gear.

(Apr. 13, 2005, D.C. Law 15-352, § 109, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.10. Documentation of arrests in connection with a First Amendment assembly.

(a) The MPD shall cause every arrest in connection with a First Amendment assembly to be documented, in writing or electronically, by the officer at the scene who makes the arrest.

(b) Except as provided in subsection (c) of this section, the arrest documentation shall be completed at a time reasonably contemporaneous with the arrest, and shall include:

- (1) The name of the person arrested;
- (2) The date and time of the arrest;
- (3) Each offense charged;
- (4) The location of the arrest, and of each offense;
- (5) A brief statement of the facts and evidence establishing the basis to arrest the person for each offense;

(6) An identification of the arresting officer (name and badge number); and

(7) Any other information the MPD may determine is necessary.

(c)(1) The Chief of Police may implement a procedure for documenting arrests in connection with a First Amendment assembly different from that set forth in subsection (b) of this section where the Chief determines that an emergency exists with regard to a specific First Amendment assembly, and that implementation of the alternative procedure is necessary to assist police in protecting persons, property, or preventing unlawful conduct; provided, that any such procedure shall adequately document the basis that existed for each individual arrest.

(2) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be made in writing and shall include an explanation of the circumstances justifying the determination.

(3) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be valid for a period of 24 hours, and may be renewed by the Chief, or in the Chief's absence, the Chief's designee.

(Apr. 13, 2005, D.C. Law 15-352, § 110, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.11. Use of handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly.

(a) The MPD shall adhere to the standard set forth in subsection (b) of this section in using handcuffs, plastic cuffs, or other physical restraints on any person arrested in connection with a First Amendment assembly who is being held in custody in the following circumstances:

(1) The arrestee is being held in a police processing center:

(A) To determine whether the arrestee should be released or the method for release;

(B) To determine whether the arrestee should be presented to court; or

(C) Pending presentation to court;

(2) The arrestee is being held in an unsecured processing center, and is not being held in a cell; or

(3) The arrestee is charged solely with one or more misdemeanor offenses, none of which have, as one of their elements, the commission of a violent act toward another person or a threat to commit such an act, or the destruction of property, or a threat to destroy property.

(b) With regard to any person who is being held in custody by the MPD in the circumstances identified in subsection (a) of this section, the MPD shall use handcuffs, plastic cuffs, or other physical restraints only to the extent reasonably necessary, and in a manner reasonably necessary, for the safety of officers and arrestees; provided, that no such person shall be restrained by connecting his or her wrist to his or her ankle, and no such person shall be

restrained in any other manner that forces the person to remain in a physically painful position.

(c) Nothing in this section is intended to restrict the otherwise lawful authority of the MPD to use handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly at the time of or immediately following arrest, while arrestees are being transported to a processing center, or while arrestees are being transported to or from court.

(Apr. 13, 2005, D.C. Law 15-352, § 111, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.12. Prompt release of persons arrested in connection with a First Amendment assembly.

(a)(1) The MPD shall promptly process any person arrested in connection with a First Amendment assembly to determine whether the person is eligible for immediate release pursuant to a lawful release option, and shall promptly release any person so eligible who opts for release.

(2) The MPD shall promptly release any person arrested in connection with a First Amendment assembly who, it is subsequently determined, should not be charged with any offense, or as to whom arrest documentation has not been prepared and preserved.

(b)(1) The MPD shall require that an officer holding a supervisory rank document and explain any instance in which a person arrested in connection with a First Amendment assembly who opts for release pursuant to any lawful release option or who is not charged with any offense is not released within 4 hours from the time of arrest.

(2) The MPD shall provide to any person not released within a reasonable time of arrest food appropriate to the person's health.

(c) The Chief of Police shall issue an annual public report that:

(1) Identifies the number of persons in the preceding year who were arrested in connection with a First Amendment assembly and opted for release pursuant to any lawful release option or were not charged with any offense and were not released from custody within 4 hours after the time of arrest;

(2) Discusses the reasons for the delay in processing such persons for release; and

(3) Describes any steps taken or to be taken to ensure that all such persons are released within 4 hours from the time of arrest.

(d) The MPD shall ensure that it possesses an automated information processing system that enables it to promptly process for release or presentation to the court all persons arrested in connection with a First Amendment assembly, and shall ensure that such system is fully operational (with respect to its hardware, software, and staffing) prior to a First Amendment assembly that has a potential for a substantial number of arrests.

(Apr. 13, 2005, D.C. Law 15-352, § 112, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.13. Notice to persons arrested in connection with a First Amendment assembly of their release options.

(a) The MPD shall fully and accurately advise persons arrested in connection with a First Amendment assembly of all potential release options when processing them for release from custody or for presentation to court.

(b)(1) The MPD shall provide a written notice identifying all release options to each person arrested in connection with a First Amendment assembly who is charged solely with one or more misdemeanor offenses. The notice shall clearly indicate that the options are alternative methods for obtaining a prompt release, and that the availability of each option is dependent on a determination that the arrestee is eligible to participate in that release option. The notice shall also identify the misdemeanor charges lodged against the arrestee.

(2) The notice required by paragraph (1) of this subsection shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

(Apr. 13, 2005, D.C. Law 15-352, § 113, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.14. Police-media relations.

(a) Within 90 days of April 13, 2005, the Chief of Police, pursuant to subchapter 1 of Chapter 5 of Title 2, shall issue rules governing police passes for media personnel.

(b) Within 90 days of April 13, 2005, the Chief of Police shall develop and implement a written policy governing interactions between the MPD and media representatives who are in or near an area where a First Amendment assembly is ongoing and who are reporting on the First Amendment assembly. The policy shall be consistent with the requirements of subsection (c) of this section.

(c)(1) The MPD shall allow media representatives reasonable access to all areas where a First Amendment assembly is occurring. At a minimum, the MPD shall allow media representatives no less access than that enjoyed by members of the general public and, consistent with public safety considerations, shall allow media representatives access to promote public knowledge of the assembly.

(2) The MPD personnel located in or near an area where a First Amendment assembly is ongoing shall recognize and honor media credentials issued by or officially recognized by the MPD.

(3) The MPD shall make reasonable accommodations to allow media

representatives effectively to use photographic, video, or other equipment relating to their reporting of a First Amendment assembly.

(Apr. 13, 2005, D.C. Law 15-352, § 114, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.15. Training for handling of, and response to, First Amendment assemblies.

The Chief of Police shall ensure that all relevant MPD personnel, including command staff, supervisory personnel, and line officers, are provided regular and periodic training on the handling of, and response to, First Amendment assemblies. The training shall be tailored to the duties and responsibilities assigned to different MPD positions and ranks during a First Amendment assembly. The training shall include instruction on the provisions of this subchapter, and the regulations issued hereunder.

(Apr. 13, 2005, D.C. Law 15-352, § 115, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.16. Use of riot gear and riot tactics at First Amendment assemblies.

(a) Officers in riot gear shall be deployed consistent with the District policy on First Amendment assemblies and only where there is a danger of violence. Following any deployment of officers in riot gear, the commander at the scene shall make a written report to the Chief of Police within 48 hours and that report shall be available to the public on request.

(b)(1) Large scale canisters of chemical irritant shall not be used at First Amendment assemblies absent the approval of a commanding officer at the scene, and the chemical irritant is reasonable and necessary to protect officers or others from physical harm or to arrest actively resisting subjects.

(2) Chemical irritant shall not be used by officers to disperse a First Amendment assembly unless the assembly participants or others are committing acts of public disobedience endangering public safety and security.

(3) A commanding officer who makes the determination specified in paragraph (1) of this subsection shall file with the Chief of Police a written report explaining his or her action within 48 hours after the event.

(Apr. 13, 2005, D.C. Law 15-352, § 116, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-331.17. Construction.

The provisions of this subchapter are intended to protect persons who are

exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this subchapter may be relied upon by such persons in any action alleging violations of statutory or common law rights.

(Apr. 13, 2005, D.C. Law 15-352, § 117, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

Subchapter II. Police Investigations.

§ 5-333.01. Short title.

This subchapter may be cited as the “Police Investigations Concerning First Amendment Activities Act of 2004”.

(Apr. 13, 2005, D.C. Law 15-352, § 201, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.02. Definitions.

For the purposes of this subchapter, the term:

(1) “First Amendment activities” means constitutionally protected speech or association, or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government.

(2) “First Amendment assembly” means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views;

(3) “Informant” means a person who provides information to the police department motivated by the expectation of receiving compensation or benefit, or otherwise is acting under the direction of the MPD.

(4) “Intelligence Section” means the Intelligence Section of the Special Investigations Division of MPD, or its successor section or unit.

(5) “Intelligence Section file” means the investigative intelligence information gathered, received, developed, analyzed, and maintained by the Intelligence Section of the Metropolitan Police Department, pursuant to an investigation or preliminary inquiry involving First Amendment activity.

(6) “Legitimate law enforcement objective” means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal; provided, that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

(7) “Mail cover” means the inspection and review of the outside of envelopes of posted mail and other delivered items.

(8) “Mail opening” means the opening and inspection and review of the contents of posted mail and other delivered items.

(9) “Minimization procedures” means reasonable precautions taken to minimize the interference with First Amendment activities, without impairing the success of the investigation or preliminary inquiry.

(10) “MPD” means the Metropolitan Police Department.

(11) “Reasonable suspicion” means a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion.

(Apr. 13, 2005, D.C. Law 15-352, § 202, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.03. Purpose; scope.

This subchapter establishes the responsibilities of and procedures for the MPD relating to investigations and preliminary inquiries, including criminal intelligence investigations and inquiries, that may affect activities protected by the First Amendment. This subchapter does not apply to criminal investigations or inquiries that do not involve First Amendment activities.

(Apr. 13, 2005, D.C. Law 15-352, § 203, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.04. Policy on investigations and inquiries involving First Amendment activities.

The MPD shall conduct all investigations and preliminary inquiries involving First Amendment activities for a legitimate law enforcement objective and, in so doing, shall safeguard the constitutional rights and liberties of all persons. MPD members may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising his or her First Amendment rights.

(Apr. 13, 2005, D.C. Law 15-352, § 204, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.05. Authorization for investigations involving First Amendment activities.

(a) The MPD may conduct a criminal investigation that involves the First Amendment activities of persons, groups, or organizations only when there is

reasonable suspicion to believe that the persons, groups, or organizations are planning or engaged in criminal activity, and the First Amendment activities are relevant to the criminal investigation.

(b) Except as provided in subsection (e) of this section, a MPD member may undertake an investigation under this section only after receiving prior written authorization from the Commander, Office of the Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations. No MPD member may conduct an investigation involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for an investigation under this section, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank as designated by MPD regulations:

- (1) Identifying the subject of the proposed investigation, if known;
- (2) Stating the facts and circumstances that create a reasonable suspicion of criminal activity; and
- (3) Describing the relevance of the First Amendment activities to the investigation.

(d)(1) Written authorization of an investigation under this section may be granted for a period of up to 120 days where the designated commander determines that there is reasonable suspicion of criminal activity.

(2) If the MPD seeks to continue an investigation past 120 days, a new memorandum and approval shall be obtained for each subsequent 120-day period. The new memorandum shall describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the investigation.

(3) The Chief of Police shall approve investigations open for more than one year, and shall do so in writing, stating the justification for the investigation.

(e) If there is an immediate threat of criminal activity, an investigation under this section may begin before a memorandum is prepared and approved; provided, that written approval must be obtained within 24 hours from the Chief of Police or his designee.

(f) An investigation involving First Amendment activities shall be terminated when logical leads have been exhausted and no legitimate law enforcement purpose justifies its continuance.

(Apr. 13, 2005, D.C. Law 15-352, § 205, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.06. Authorization for preliminary inquiries involving First Amendment activities.

(a) The MPD may initiate a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, where:

(1) The MPD receives information or an allegation the responsible handling of which requires further scrutiny; and

(2) The information or allegation received by MPD does not justify opening a full investigation because it does not establish reasonable suspicion that persons are planning or engaged in criminal activity.

(b)(1) A MPD member may undertake a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, only by receiving prior written authorization from the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations.

(2) Except as provided in § 5-333.09, no MPD member may conduct a preliminary inquiry involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for a preliminary inquiry, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations:

(1) Identifying the subject of the proposed inquiry, if known;

(2) Stating the information or allegations that are the basis for the preliminary inquiry; and

(3) Describing the relevance of the First Amendment activities to the inquiry.

(d)(1) A preliminary inquiry under this section may be authorized for a period of up to 60 days.

(2) If the MPD seeks to continue this preliminary inquiry beyond 60 days, a new memorandum and approval must be obtained for an additional 60-day period. The new memorandum must describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the inquiry.

(3) The Chief of Police shall approve a preliminary inquiry under this section that is to remain open for more than 120 days, and shall do so in writing, stating the justification for the preliminary inquiry.

(e) A preliminary inquiry under this section shall be terminated when it becomes apparent that a full investigation is not warranted.

(Apr. 13, 2005, D.C. Law 15-352, § 206, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.07. Techniques and procedures for investigations and preliminary inquiries.

(a) The investigative techniques used in any particular investigation or preliminary inquiry shall be dictated by the needs of the investigation or inquiry.

(b) The MPD shall employ minimization procedures in all investigations and preliminary inquiries involving First Amendment activities. Where the conduct of an investigation or preliminary inquiry presents a choice between

the uses of more or less intrusive methods or investigative techniques, the MPD shall consider whether the information could be obtained in a timely and effective way by the less intrusive means.

(c) The following techniques may be used in an authorized investigation or authorized preliminary inquiry involving First Amendment activities, without additional authorization:

(1) Examination of public records and other sources of information available to the public;

(2) Examination of MPD indices, files, and records;

(3) Examination of records and files of other government or law enforcement agencies;

(4) Interviews of any person; and

(5) Physical, photographic, or video surveillance from places open to the public or otherwise legally made available.

(d) Undercover officers, informants, and mail covers may be used in an authorized preliminary inquiry after written approval and authorization is obtained from the Chief of Police or his designee. Mail openings and Wire Interception and Interception of Oral Communications, as defined in § 23-541, shall not be used in a preliminary inquiry.

(e) The following techniques may be used in an authorized investigation involving First Amendment activities, after written approval and authorization is obtained from the Chief of Police or his designee:

(1) Wire Interception and Interception of Oral Communications, as defined in § 23-541;

(2) Undercover officers and informants; and

(3) Mail covers, mail openings, pen registers, and trap and trace devices.

(f) If there is an immediate threat of criminal activity, verbal authority by the designated MPD commander to use the investigative techniques described in subsection (d) and (e) of this section is sufficient until a written authorization can be obtained; provided, that other legal requirements have been met. The required written authorization shall be obtained within 5 days of the occurrence of the emergency.

(Apr. 13, 2005, D.C. Law 15-352, § 207, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.08. Rules for investigations and preliminary inquiries.

(a) Within 90 days of April 13, 2005, the Chief of Police, pursuant to subchapter I of Chapter 5 of Title 2, and in accordance with this subchapter, shall issue rules governing investigations and preliminary inquiries involving First Amendment activities, including the authorization, conduct, monitoring, and termination of investigations and preliminary inquiries, and the maintenance, dissemination, and purging of records, files, and information from such investigations and preliminary inquiries.

(b) The rules issued under subsection (a) of this section shall require the MPD to direct undercover officers and informants to refrain from:

- (1) Participating in unlawful acts or threats of violence;
- (2) Using unlawful techniques to obtain information;
- (3) Initiating, proposing, approving, directing, or suggesting unlawful acts or a plan to commit unlawful acts;
- (4) Being present during criminal activity or remaining present during unanticipated criminal activity, unless it has been determined to be necessary for the investigation;
- (5) Engaging in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment activities;
- (6) Attending meetings or engaging in other activities for the purpose of obtaining legally privileged information, such as attorney-client communications or physician-patient communications; and
- (7) Recording or maintaining a record concerning persons or organizations who are not a target of the investigation or preliminary inquiry, unless the information is material to the investigation or preliminary inquiry, or the information would itself justify an investigation or preliminary inquiry under this subchapter.

(c) The rules issued under subsection (a) of this section shall require that all members assigned to the Intelligence Section, Special Investigations Branch, attend training on this subchapter and the rules. The rules shall require that all members of the Intelligence Section sign an acknowledgment that they have received, read, understood, will abide by, and will maintain a copy of this subchapter and the rules.

(Apr. 13, 2005, D.C. Law 15-352, § 208, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.09. Preliminary inquiries relating to First Amendment assemblies.

(a) A MPD member may initiate a preliminary inquiry relating to a First Amendment assembly, for public safety reasons, without authorization, as follows:

- (1) Members may gather public information regarding future First Amendment assemblies and review notices and approved assembly plans.
- (2) Members may communicate overtly with the organizers of a First Amendment assembly concerning the number of persons expected to participate, the activities anticipated, and other similar information regarding the time, place, and manner of the assembly.
- (3) Members may communicate overtly with persons other than the organizers of a First Amendment assembly to obtain information relating to the number of persons expected to participate in the assembly.
- (4) Members may collect information on prior First Amendment assemblies to determine what police resources may be necessary to adequately

protect participants, bystanders, and the general public, and to enforce all applicable laws.

(b) Filming and photographing First Amendment assemblies may be conducted by MPD members for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of police units, and for training purposes. Filming and photographing of First Amendment assemblies may not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.

(Apr. 13, 2005, D.C. Law 15-352, § 209, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.10. Authorized public activities.

Nothing in this subchapter shall be interpreted as prohibiting any MPD member from, in the course of their duties, visiting any place, and attending any event that is open to the public, or reviewing information that is in the public domain, on the same terms and conditions as members of the public, so long as members have a legitimate law enforcement objective; provided, that any undercover activities shall be authorized as required by § 5-333.07.

(Apr. 13, 2005, D.C. Law 15-352, § 210, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.11. Files and records.

(a) Information to be retained in an Intelligence Section file shall be evaluated for the reliability of the source of the information and the validity and accuracy of the content of the information prior to filing. The file shall state whether the reliability, validity, and accuracy of the information have been corroborated.

(b) The MPD shall not collect or maintain information about the political, religious, social, or personal views, associations, or activities of any individual, group, or organization unless such information is material to an authorized investigation or preliminary inquiry involving First Amendment activities.

(c) No information shall be knowingly included in an Intelligence Section file that has been obtained in violation of any applicable federal, state, or local law, ordinance, or regulation. The Chief of Police, or his designee, shall be responsible for establishing that no information is entered in Intelligence Section files in violation of this subsection.

(d) The MPD may disseminate information obtained during preliminary inquiries and investigations involving First Amendment activities to federal, state, or local law enforcement agencies, or local criminal justice agencies, only when such information:

(1) Falls within the investigative or protective jurisdiction or litigation-related responsibility of the agency;

(2) May assist in preventing an unlawful act or the use of violence, or any other conduct dangerous to human life; or

(3) Is required to be disseminated by an interagency agreement, statute, or other law.

(e) All requests for dissemination of information from an Intelligence Section file shall be evaluated and approved by the Chief of Police or his designee. All dissemination of information shall be done by written transmittal or recorded on a form that describes the documents or information transmitted, and a record of the dissemination shall be maintained for a minimum of one year.

(f) Intelligence Section file information shall not be disseminated to any non-law enforcement agency, department, group, organization, or individual, except as authorized by law.

(g) The Chief of Police or his designee shall periodically review information contained in Intelligence Section files and purge records that are not accurate, reliable, relevant, and timely.

(Apr. 13, 2005, D.C. Law 15-352, § 211, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.12. Monitoring and auditing of investigations and preliminary inquiries.

(a) Authorizations of investigations and preliminary inquiries involving First Amendment activities are to be reviewed every 90 days by a panel of no fewer than 3 MPD commanding officers designated by the Chief of Police.

(b) The Commander, Office of the Superintendent of Detectives, or a commander of similar rank designated in the MPD regulations, shall monitor the compliance of undercover officers and informants with the requirements of this subchapter.

(c) The Chief of Police shall annually prepare a report on the MPD's investigations and preliminary inquiries involving First Amendment activities. The report shall be transmitted to the Mayor and Council and a notice of its publication shall be published in the District of Columbia Register. The report shall include, at a minimum,

(1) The number of investigations authorized;

(2) The number of authorizations for investigation sought but denied;

(3) The number of requests from outside agencies, as documented by forms requesting access to records of investigations conducted pursuant to this subchapter;

(4) The number of arrests, prosecutions, or other law enforcement actions taken as a result of such investigations; and

(5) A description of any violations of this subchapter or the regulations issued pursuant to this subchapter, and the actions taken as a result of the violations, including whether any officer was disciplined as a result of the violation.

(d)(1) The Office of the District of Columbia Auditor ("ODCA") shall serve as

auditor of MPD's investigations and preliminary inquiries involving First Amendment activities in order to assess compliance with this subchapter.

(2) On an annual basis, the ODCA shall audit MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities. In conducting the audit, the ODCA shall review each authorization granted pursuant to §§ 5-333.05 and 5-333.06, requests for authorization that were denied, and investigative files associated with the authorizations. The ODCA shall prepare a public report of its audit that shall contain a general description of the files and records reviewed, and a discussion of any substantive violation of this subchapter discovered during the audit. A preliminary report of the audit shall be provided by the ODCA to the Chief of Police for review and comment at least 30 days prior to issuance of a final audit.

(3) The ODCA shall have access to MPD files and records for purposes of its audit of investigations and preliminary inquiries involving First Amendment activities.

(4) In discharging its responsibilities, the ODCA shall protect the confidentiality of MPD files and records.

(Apr. 13, 2005, D.C. Law 15-352, § 212, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

§ 5-333.13. Construction.

The provisions of this subchapter are intended to protect persons who are exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this subchapter may be relied upon by such persons in any action alleging violations of statutory or common law rights.

(Apr. 13, 2005, D.C. Law 15-352, § 213, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

Subchapter III. Post-and-Forfeiture Procedure.

§ 5-335.01. Enforcement of the post-and-forfeit procedure.

(a) For the purposes of this section, the term "post-and-forfeit procedure" shall mean the procedure enforced as part of the criminal justice system in the District of Columbia whereby a person charged with certain misdemeanors may simultaneously post and forfeit an amount as collateral (which otherwise would serve as security upon release to ensure the arrestee's appearance at trial) and thereby obtain a full and final resolution of the criminal charge.

(b) The resolution of a criminal charge using the post-and-forfeit procedure is not a conviction of a crime and shall not be equated to a criminal conviction. The fact that a person resolved a charge using the post-and-forfeit procedure

may not be relied upon by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action to impose any sanction, penalty, enhanced sentence, or civil disability.

(c) Whenever the Metropolitan Police Department ("MPD") or the Office of the Attorney General for the District of Columbia tenders an offer to an arrestee to resolve a criminal charge using the post-and-forfeit procedure, the offer shall be accompanied with a written notice provided to the arrestee describing the post-and-forfeit procedure and the consequences of resolving the criminal charge using this procedure.

(d) The written notice required by subsection (c) of this section shall include, at a minimum, the following information:

(1) The identity of the misdemeanor crime that is to be resolved using the post-and-forfeit procedure and the amount of collateral that is to be posted and forfeited;

(2) A statement that the arrestee has the right to choose whether to accept the post-and-forfeit offer or, alternatively, proceed with the criminal case and a potential adjudication on the merits of the criminal charge;

(3) If the arrestee is in custody, a statement that if the arrestee elects to proceed with the criminal case he or she may also be eligible for prompt release on citation, or will be promptly brought to court for determination of bail;

(4) A statement that the resolution of the criminal charge using the post-and-forfeit procedure will preclude the arrestee from obtaining an adjudication on the merits of the criminal charge;

(5) A statement that the resolution of the criminal charge using the post-and-forfeit procedure is not a conviction of a crime and may not be equated to a criminal conviction, and may not result in the imposition of any sanction, penalty, enhanced sentence, or civil disability by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action;

(6) A statement that the agreement to resolve the charge using the post-and-forfeit procedure is final after the expiration of 90 days from the date the notice is signed and that, within the 90-day period, the arrestee or the Office of the Attorney General may file a motion with the Superior Court of the District of Columbia to set aside the forfeiture and proceed with the criminal case; and

(7) A statement that, following resolution of the charge using the post-and-forfeit procedure, the arrestee will continue to have an arrest record for the charge at issue, unless the arrestee successfully moves in the Superior Court of the District of Columbia to seal his or her arrest record.

(e) The notice required by subsection (c) of this section shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

(f) An arrestee provided the written notice required by subsection (c) of this section who wishes to resolve the criminal charge using the post-and-forfeit

procedure shall, after reading the notice, sign the bottom of the notice, thereby acknowledging the information provided in the notice and agreeing to accept the offer to resolve the charge using the post-and-forfeit procedure. After the arrestee signs the notice, the arrestee shall be provided with a copy of the signed notice.

(g) Within 90 days of the Superior Court of the District of Columbia issuing an updated bond and collateral list, the Chief of Police shall issue a list of all misdemeanor charges that MPD members are authorized to resolve using the post-and-forfeit procedure, and the collateral amount associated with each charge. The Chief shall make the list available to the public, including placing the list on the MPD website.

(h) The Mayor shall submit an annual public report to the Council identifying the total amount of money collected the previous year pursuant to the post-and-forfeit procedure and the number of criminal charges, by specific charge, resolved the previous year using the post-and-forfeit procedure. The data shall be reported separately for instances in which the post-and-forfeit procedure is independently used by the MPD (without the approval, on a case-by-case basis, of either the Office of the Attorney General or the Superior Court of the District of Columbia), and for all other instances in which the post-and-forfeit procedure is used. The report also shall identify the fund or funds in which the post-and-forfeit moneys were placed.

(Apr. 13, 2005, D.C. Law 15-352, § 302, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

CASE NOTES

ANALYSIS

Due process.
Right to counsel.
Standing.

Due process.

District of Columbia statute permitting arrestee to pay and forfeit fee for arrestee's immediate release from jail without prosecution did not violate arrestee's Fifth Amendment procedural or substantive due process rights as applied, where arrestee was given the choice to pay fee or remain in jail until presented to court and he could contest charges against him, including asserting lack of probable cause, for up to 90 days after availing himself of the fee. *Fox v. District of Columbia*, 851 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 44141 (2012), dismissed in part by 2013 U.S. Dist. LEXIS 20524 (D.D.C. Feb. 15, 2013).

District of Columbia statute permitting arrestee to pay and forfeit fee for arrestee's immediate release from jail without prosecution did not warrant any additional procedure, and therefore, statute's procedure did not violate arrestee's Fifth Amendment procedural due

process rights on its face, where arrestee was not required to pay, if he did pay, he had 90 days to re-think decision by moving to set aside forfeiture, and government had legitimate interests in preventing overcrowding of its jails and not expending its limited resources on prosecuting petty offenses. *Fox v. District of Columbia*, 851 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 44141 (2012), dismissed in part by 2013 U.S. Dist. LEXIS 20524 (D.D.C. Feb. 15, 2013).

District of Columbia statute permitting arrestee to pay and forfeit fee for arrestee's immediate release from jail without prosecution did not violate any fundamental principle of justice, as would violate Fifth Amendment procedural due process on its face, where arrestees were offered the choice to pay the fee and be released or stay in jail, arrestees had 90 days to re-think decision to pay, and payment did not result in record of conviction. *Fox v. District of Columbia*, 851 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 44141 (2012), dismissed in part by 2013 U.S. Dist. LEXIS 20524 (D.D.C. Feb. 15, 2013).

Right to counsel.

District of Columbia statute permitting arrestee to pay and forfeit fee for arrestee's im-

mediate release from jail without prosecution did not violate his Sixth Amendment right to counsel in criminal prosecutions, where paying fee did not result in a criminal record, statute stated payment was not admission of guilt, and arrestee was permitted to consult with counsel later and move to set aside forfeiture. *Fox v. District of Columbia*, 851 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 44141 (2012), dismissed in part by 2013 U.S. Dist. LEXIS 20524 (D.D.C. Feb. 15, 2013).

Standing.

Arrestee had standing to bring § 1983 claims

against District of Columbia, challenging under the Fourth, Fifth, Sixth, and Eighth Amendments, District law permitting him to post and forfeit collateral in return for his release from jail without prosecution; arrestee sought injunctive relief and relief on behalf of a class of persons who were subject in the past and who will be subject to law in the future. *Fox v. District of Columbia*, 851 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 44141 (2012), dismissed in part by 2013 U.S. Dist. LEXIS 20524 (D.D.C. Feb. 15, 2013).

Subchapter IV. Police Identifying Information.

§ 5-337.01. Police identifying information.

Every member of the Metropolitan Police Department (“MPD”), while in uniform, shall wear or display the nameplate and badge issued by the MPD, or the equivalent identification issued by the MPD, and shall not alter or cover the identifying information or otherwise prevent or hinder a member of the public from reading the information.

(Apr. 13, 2005, D.C. Law 15-352, § 321, 52 DCR 2296.)

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

CHAPTER 4. FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT.

Subchapter I. General

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- 5-401. Area of service; division of District into fire companies; pre-hospital care and services; approval required for major changes in manner of fire protection.
- 5-402. Appointments and promotions covered by civil service; selection of Fire Chief and Deputy Fire Chiefs; original appointment and transfer of privates; vacancies.
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- 5-411. Extra equipment authorized for volunteer fire organization.
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- equipment to federal government; service performed in line of duty.
- 5-415. Services to District institutions located outside the District.
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- 5-418. Cadet program — Authorized; purpose; preference for appointment; appropriations.
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Subchapter II. Fire and Emergency Medical Services Training

PART A

Training For Non-District Personnel

- 5-431. Fire and Emergency Medical Services training for non-District of Columbia personnel.
- 5-432. Establishment of Fire and Emergency Medical Services Training Fund.

PART B

Education And Training Program

- 5-441. Fire and Emergency Medical Services education and training program; certification of firefighters, paramedics, and emergency medical technicians.

Subchapter III. Fire and Emergency Medical Services Agility Testing.

- 5-451. Physical examinations and agility standards.

Subchapter I. General.

§ 5-401. Area of service; division of District into fire companies; pre-hospital care and services; approval required for major changes in manner of fire protection.

(a) The Fire and Emergency Medical Services Department ("Department") shall provide fire prevention and fire protection within the geographical boundaries of the District of Columbia. The District shall be divided into such fire companies, and other units as the Council of the District of Columbia may from time to time direct. Major changes in the manner the Department

provides fire protection and fire prevention shall be approved by resolution of the Council.

(b) The Department shall provide pre-hospital medical care and transport within the geographical boundaries of the District of Columbia. Major changes in the manner the Department provides emergency medical services shall be approved by resolution of the Council.

(June 20, 1906, 34 Stat. 314, ch. 3443, § 1; Apr. 7, 1977, D.C. Law 1-111, § 2, 23 DCR 9384; Apr. 15, 2008, D.C. Law 17-147, § 2(a), 55 DCR 2558; Mar. 25, 2009, D.C. Law 17-353, § 232, 56 DCR 1117.)

Cross references. — District of Columbia Residential, Commercial, and Institutional Structures Fire Protection Study Commission, see § 3-1101 et seq.

District of Columbia, territorial area, see § 1-101.

Prior Codifications. — 1981 Ed., § 4-301. 1973 Ed., § 4-401.

Effect of amendments. — D.C. Law 17-147, designated the existing text as subsec. (a); in subsec. (a), substituted "Fire and Emergency Medical Services Department ('Department')" for "Fire Department"; and added subsec. (b).

D.C. Law 17-353 validated a previously made technical correction in subsec. (a); and, in subsec. (b), deleted "Fire and Emergency Medical Services" preceding "Department".

Emergency legislation. — For temporary change in the Fire and Emergency Medical Services Department to allow it to rotate the closing of no more than 8 companies on a daily basis, see § 202 of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412).

For temporary (90-day) implementation of management reforms involving safety equipment and personnel, see § 1012 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) addition, see § 3002 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

Legislative history of Law 1-111. — Law 1-111, the "Fire Department Operations Act of 1976," was introduced in Council and assigned Bill No. 1-377, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on July 27, 1976, and September 15, 1976, respectively. Enacted without signature by the Mayor on January 7, 1977, it was assigned Act. No. 1-198 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-147. — Law 17-147, the "Emergency Medical Services Improvement Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-170

which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-313 and transmitted to both Houses of Congress for its review. D.C. Law 17-147 became effective on April 15, 2008.

Legislative history of Law 17-353. — Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Mayor's Orders. — Redesignation of fire department: See Mayor's Order 90-147, October 31, 1990.

Editor's notes. — Relocation of Engine Company No. 3: Pursuant to Resolution 5-407, the "Relocation of Engine Company No. 3 Resolution of 1983," effective November 1, 1983, the Council authorized the relocation of Engine Company No. 3.

Relocation of Engine Company No. 24 Resolution of 1994: Pursuant to Resolution 10-247, effective January 14, 1994, the Council authorized the relocation of Engine Company No. 24 of the Fire and Emergency Medical Services Department.

Closing of companies: For temporary changes in Fire and Emergency Services Department, see § 502 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217), and § 802 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 802 of D.C. Law 11-52 provided that, pursuant to D.C. Law 1-111, the Council approved the following changes in the Fire and Emergency Services Department:

(1) The Fire and Emergency Medical Services Department may permanently close Rescue Squad 4, located at 4930 Connecticut Avenue,

N.W., and Truck Company 1, located at 500 F Street, N.W.

(2) The Fire and Emergency Medical Services Department may rotate the closing of no more than 5 companies on a daily basis.

Section 201 of D.C. Law 11-152, provided that pursuant to § 5-401, the Council approves the change in the Fire and Emergency Medical Services Department to allow it to rotate the closing of no more than 8 companies on a daily basis.

Section 404 of D.C. Law 11-198 provided that "notwithstanding any other provision of law, the Fire and Emergency Medical Services Department shall discontinue the rotational closing of any fire or rescue company after September 30, 1996."

Section 405 of D.C. Law 11-198 repealed § 802(2) of D.C. Law 11-52.

Section 406 of D.C. Law 11-198 repealed § 201 of D.C. Act 11-279.

Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and §§ 405 and 406 of the act shall apply after September 30, 1996.

Section 1012 of D.C. Law 13-38 provided:

"(a) The Mayor shall direct the Chief of the Fire and Emergency Medical Services Department ('Department') to establish as a funding priority for the Department, the purchase of equipment, including state of the art air masks and radios, and other articles identified in the Reconstruction Committee Report on the October 24, 1997, fire that resulted in the death of Sergeant Carter; and to implement a dual role/cross trained/firefighter/paramedic pilot program within the Department, using existing and other funds which may become available, including overtime funds, during Fiscal Year 2000.

"(b) The Mayor shall direct the Department Chief to deploy 2 Advanced Life Support Paramedics on 4 engine companies in the Department's fleet. The Mayor shall direct the Chief to utilize existing or overtime funds to implement this project. The Mayor shall direct the Department Chief to consult with the Council before he determines which 4 engine companies will participate in the pilot program."

CASE NOTES

Due process.

District of Columbia statute providing that District of Columbia Fire and Emergency Medical Services (FEMS) "shall provide pre-hospital medical care and transport within the geographical boundaries of the District of Columbia" did not give man who sought medical attention at a FEMS station a due process

property interest in FEMS emergency services, as required for the denial of such services without due process of law to constitute a violation of the man's right to procedural due process. *Moses v. District of Columbia*, 741 F.Supp.2d 123, 2010 U.S. Dist. LEXIS 102216 (2010).

§ 5-402. Appointments and promotions covered by civil service; selection of Fire Chief and Deputy Fire Chiefs; original appointment and transfer of privates; vacancies.

(a) The Mayor of the District of Columbia shall appoint, assign to such duty or duties as he may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the Fire Department of the District of Columbia, according to such rules and regulations as the Council of the District of Columbia, in its exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend; provided, that the rules and regulations of the Fire Department heretofore promulgated are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said Council; provided further, that all officers, members, and civilian employees of such Department, except the Fire Chief and Deputy Fire Chiefs, shall be appointed and promoted in accordance with the provisions of §§ 1101 to 1103, 1105, 1301 to 1303, 1307, 1308, 2102, 2951, 3302 to 3306, 3318, 3319, 3321, 3361, 7202, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance

thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided; provided further, that the Deputy Fire Chiefs shall be selected from among the battalion fire chiefs, the Fire Marshal, and the superintendent of machinery; provided further, that all original appointments of privates shall be made to class 1, privates who have served 1 year in class 1 shall, if found efficient, be transferred to class 2, and privates who have served 2 years in class 2 shall, if found efficient, be transferred to class 3. Such transfers shall not be subject to the provisions of said sections of Title 5, United States Code, and the rules and regulations made in pursuance thereof. Whenever vacancies occur in class 2 or 3 which cannot be filled by such transfers, the Mayor may appoint additional privates in class 1 equal in number to the positions vacant in class 2 or 3; and any moneys appropriated for the payment of the salaries for such vacant positions shall be available to pay to such additional privates of class 1 the salaries of their grade.

(a-1)(1) The Mayor shall appoint the Fire Chief, with the advice and consent of the Council, pursuant to § 1-523.01(a).

(2) The Fire Chief may be selected for appointment from among the ranks of officers and members of the Fire and Emergency Medical Services Department, or from outside the department.

(3) A person selected for appointment as Fire Chief from outside the department shall be paid from the DX Schedule for subordinate agency head positions pursuant to § 1-610.52 and, unless otherwise provided by law, shall be eligible to receive retirement and other benefits as prescribed in subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.].

(4) A person selected for appointment as Fire Chief from among the ranks of officers and members of the department shall be paid from the DX Schedule for subordinate agency head positions pursuant to § 1-610.52 and, unless otherwise provided by law, shall be subject to the retirement provisions for officers and members of the Fire and Emergency Medical Services Department.

(b)(1) [For applicability of (b), see Editor's notes.] The Fire Chief shall recommend to the Director of Personnel criteria for Career Service promotions and Excepted Service appointments to Battalion Fire Chief and Deputy Fire Chief that address the areas of education, experience, physical fitness, and psychological fitness. The recommended criteria shall be the same for Career Service promotions and Excepted Service appointments to these positions. When establishing the criteria, the Fire Chief shall review national standards, such as the National Fire Protection Association's Standard on Fire Officer Professional Qualifications.

(2) All candidates for the position of Battalion Fire Chief and Deputy Fire Chief shall be of good standing with no disciplinary action pending or administered resulting in more than a 14-day suspension or termination within the past 3 years.

(June 20, 1906, 34 Stat. 314, ch. 3443, § 2; Jan. 24, 1920, 41 Stat. 396, ch. 54; Sept. 30, 2004, D.C. Law 15-194, § 103, 51 DCR 9406; Apr. 15, 2008, D.C. Law

17-147, § 2(b), 55 DCR 2558; May 13, 2008, D.C. Law 17-154, § 5, 55 DCR 3678.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Military service, exemption, see § 49-402.

Protection of life, health, or property, regulations, see § 1-303.03.

Prior Codifications. — 1981 Ed., § 4-302. 1973 Ed., § 4-402.

Effect of amendments. — D.C. Law 15-194 designated the existing text as subsection (a); and added subsec. (b).

D.C. Law 17-147, in subsec. (a), deleted “the Fire Chief of the Fire Department shall be selected from among the Deputy Fire Chiefs, the battalion fire chiefs, the Fire Marshal and the superintendent of machinery,” following “provided further, that.

D.C. Law 17-154 added subsec. (a-1).

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 17-147. — For Law 17-147, see notes following § 5-401.

Legislative history of Law 17-154. — For Law 17-154, see notes following § 5-105.01.

References in text. — Former 5 U.S.C. § 3306, referred to in the second proviso of the first sentence, was repealed February 10, 1978, 92 Stat. 25, Pub. L. 95-228, § 1. 5 U.S.C. § 3319 was repealed October 13, 1978, 92 Stat. 1149, Pub. L. 95-454, § 307. For provisions similar to these repealed sections, see 5 U.S.C. § 7201 et seq., generally. Former 5 U.S.C. § 7152 was transferred October 13, 1978, by 92 Stat. 1216, Pub. L. 95-454 to 5 U.S.C. § 7202. Appropriate changes have been made in the text of this section.

Editor’s notes. — Office of Chief Engineer abolished: The Office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to and vested in the Fire Chief. The Deputy Chief Engineer of the Fire Department was designated “Deputy Fire Chief,” and the Battalion Chief Engineer was designated “Battalion Fire Chief” by Reorganization Order No. 6, dated September 16, 1952, issued pursuant to Reorganization Plan

No. 5 of 1952. Reorganization Order No. 38, dated June 18, 1953, established a Fire Department headed by the Fire Chief. The Fire Chief was given full authority over the Department to be exercised in accordance with applicable laws, rules, and regulations. The Order set up the organization of the Department, and provided that the previously existing Fire Department was abolished and its functions transferred to the new Department. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. Reorganization Order No. 38 was amended by Mayor’s Order 81-233a, dated November 9, 1981. That Order set forth the organization of the Fire Department.

Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: “Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(107) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Final policy.
In general.

Final policy.

African-American members and officers of District of Columbia Fire and Emergency Medical Services (DCFEMS) who were seeking to hold District liable under § 1981 and § 1983

for denial of their reinstatement to Arson Investigation Unit after they were cleared of charges against them failed to demonstrate that District policy or custom caused their injuries; neither their immediate supervisor nor Deputy Fire Chief had final policymaking authority under D.C. law, and they failed to provide evidence that District was deliberately indifferent to violations of their constitutional

rights. *Hamilton v. District of Columbia*, 852 F.Supp.2d 139, 2012 U.S. Dist. LEXIS 47808 (2012).

Chief of District of Columbia Fire and Emergency Medical Services Department (FEMS) was not a final policy maker, as required for FEMS captain's § 1983 claim against District of Columbia, alleging that FEMS's policies violated the First, Fourth, and Fifth Amendments; District of Columbia code gave no specific grant of authority to the chief to set final policy, and the mayor and city council expressly reserved supervisory powers to themselves. *Coleman v. District of Columbia*, 828 F.Supp.2d 87, 2011 U.S. Dist. LEXIS 140500 (2011).

In general.

Federal Civil Service Commission employ-

ment regulation requiring that there be a rational relationship between job performance and an employment practice was applicable to District of Columbia fire department by reason of statute providing that members of such department shall be appointed in accordance with rules and regulations promulgated by Commission. D.C. Code § 4-402; 5 U.S.C. § 3302. *Fox v. Washington*, 396 F. Supp. 504, 1975 U.S. Dist. LEXIS 12728 (1975).

§ 5-403. Age limits in original appointments.

The Council of the District of Columbia is hereby authorized to determine and fix the minimum and maximum limits of age within which original appointments to the Fire Department may be made.

(Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Metropolitan Police Department, appointments, age limits, see § 5-10

Prior Codifications. — 1981 Ed., § 4-303. 1973 Ed., § 4-403.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(108) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-404. Composition; 2-platoon system; services of veterinary surgeon; attendance by police surgeon.

The Fire Department of the District of Columbia shall be composed of and operated upon a 2-platoon system and the personnel thereof shall consist of 1 Fire Chief; such number of Deputy Fire Chiefs, all of whom shall have had at least 5 years of experience in some regularly organized municipal fire department, and battalion fire chiefs as said Mayor of the District of Columbia may deem necessary from time to time within the appropriations made by Congress; 1 fire marshal; such number of deputy fire marshals, inspectors, and clerks as said Mayor may deem necessary from time to time within the appropriations made by Congress; such number of captains, lieutenants, and sergeants as said Mayor may deem necessary from time to time within the

appropriations made by Congress; 1 superintendent of machinery; and such number of assistant superintendents of machinery, pilots, marine engineers, assistant marine engineers, marine firemen, privates of class 6, privates of class 5, privates of class 4, privates of class 3, privates of class 2, privates of class 1, hostlers, and laborers as said Mayor may deem necessary from time to time within the appropriations made by Congress; provided, that the Fire Chief of the Fire Department of the District of Columbia shall have the right to call for and obtain the services of any veterinary surgeon employed by the District who at the time shall not be engaged in a more emergent veterinary service for the District; provided further, that the police surgeons of said District are required to attend, without charge, the members of the Fire Department of said District, and examine all applicants for appointment to, promotion in, and retirement from said Fire Department.

(June 20, 1906, 34 Stat. 314, ch. 3443, § 3; Jan. 24, 1920, 41 Stat. 397, ch. 54; June 19, 1948, 62 Stat. 498, ch. 530, § 1.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-304. 1973 Ed., § 4-404.

Editor's notes. — Office of Chief Engineer abolished: See Historical and Statutory Notes following § 5-402.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-404.01. Medical Director.

(a)(1) The Mayor shall appoint, with the advice and consent of the Council in accordance with paragraph (2) of this subsection, a Medical Director of the Fire and Emergency Medical Services Department ("Department"), who shall hold the rank of Assistant Fire Chief. The Medical Director shall report directly to the Fire Chief, but may be removed only by the Mayor.

(2) Except as provided in paragraph (3) of this subsection, the Mayor shall submit a nomination for Medical Director to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the nomination, by resolution, within the 90-day review period, the nomination shall be deemed disapproved.

(3) The Mayor shall not be required to submit to the Council the appointment of the incumbent Medical Director serving as of December 19, 2007.

(b) To be eligible for appointment, the Medical Director shall:

(1) Be a physician licensed to practice medicine in the District of Columbia;

(2) Be board certified in a medical specialty that represents the broad

patient base that the Department serves, such as emergency medicine, general surgery, family medicine, or internal medicine; and

(3) Have at least 4 years of substantial experience in emergency medical services, such as experience as a medical director or assistant medical director of emergency medical services, or successful completion of a recognized fellowship in emergency medical services.

(c) The Medical Director shall maintain clinical practice at a District hospital or hold an appointment at an accredited academic medical center within the District.

(d) The Medical Director shall:

(1) Provide medical oversight for all aspects of pre-hospital medical services provided by the Department, including:

(A) Written policies, procedures, and protocols for pre-hospital medical care;

(B) Medical training; and

(C) Quality assurance of medical services;

(2) Supervise the administration of pre-hospital medical care; and

(3) Work collaboratively with the Fire Chief, Assistant and Deputy Fire Chiefs, and other personnel in the Department.

(e)(1) The provision of pre-hospital medical care by the Department's certified emergency medical technicians and paramedics shall be under the license of the Medical Director.

(2) The Medical Director shall not be personally liable for the good-faith performance of the Medical Director's duties under this act for a death or injury that results from the provision of pre-hospital medical care by the Department's certified emergency medical technicians or paramedics practicing under the license of the Medical Director unless the death or injury is the result of willful misconduct or gross negligence of the Medical Director.

(f)(1) The Medical Director shall have the authority to order hospital emergency rooms within the District of Columbia not to close to Department transports and to require hospitals and medical providers to accept the transfer of care of a patient or patients within a specified period of time.

(2) The Department may transport patients to a pre-approved clinic or other medical facility that is not a hospital emergency room, appropriate to the patient's need.

(3) The Medical Director shall have the authority to work directly with the Mayor, the Director of the Department of Health, and other appropriate agencies to develop programs or make written agreements with clinics or other health care providers to receive the Department's transport of patients.

(4) The Medical Director shall have the authority to work with the District-based hospitals to coordinate pre-hospital medical services with medical research of best practices for delivery of pre-hospital medical care.

(June 20, 1906, 34 Stat. 314, ch. 3443, § 3a, as added Apr. 15, 2008, D.C. Law 17-147, § 2(c), 55 DCR 2558.)

Legislative history of Law 17-147. — For Law 17-147, see notes following § 5-401.

§ 5-405. Workweek established; hours of duty; days off duty; holidays.

(a) Beginning with the 1st day of the 1st pay period which begins not less than 120 days after enactment of this amendatory subsection or which begins on or after July 1, 1962, whichever is later, the Mayor of the District of Columbia is authorized and directed to establish a workweek for officers and members of the Firefighting Division of the Fire Department of the District of Columbia which will result in an average workweek of not to exceed 48 hours during an administratively established workweek cycle which the Mayor is hereby authorized to establish from time to time.

(b) The Firefighting Division shall operate under a 2-shift system and all hours of duty of any shift shall be consecutive.

(c) The Mayor of the District of Columbia is further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the Firefighting Division, of 40 hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek: Provided, that notwithstanding the provisions of this subsection, the Mayor of the District of Columbia or his designated agent or agents may, whenever the exigencies of the Fire Department require temporary or short-term services of 1 or more officers or members, order such officer, officers, member, or members to perform such services.

(d) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on 1 day and extending without a break in continuity into the next day, or in the case of 2 shifts beginning on the same day, the Mayor is authorized to designate the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(e) If a holiday shall fall on any day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Mayor of the District of Columbia, and if he is required to be on duty in lieu of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a break in continuity into the next day, the Mayor of the District of Columbia is authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection, the word "holiday" shall have the same meaning as such word has in § 5-521.02, and as supplemented by § 6103 of Title 5, United States Code.

(f) For fiscal years 2011 and 2012, no member of the Fire and Emergency Medical Services Department, except for officers, shall work more than 204 hours in 2 consecutive pay periods.

(g) For fiscal years 2011 and 2012, no officer or member shall be permitted to earn overtime compensation for overtime work performed in a pay period after that officer or member has received sick leave in the same pay period.

(June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87-399, §§ 1, 2; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, §§ 1, 2; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89-282, § 2; Sept. 24, 2010, D.C. Law 18-223, § 3023, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 3013, 58 DCR 6226.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-305. 1973 Ed., § 4-404a.

Effect of amendments. — D.C. Law 18-223 added subsecs. (f) and (g).

D.C. Law 19-21, in subsecs. (f) and (g), substituted “fiscal years 2011 and 2012” for “fiscal year 2011”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3023 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and

assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-406. Appropriations for uniforms and other equipment.

For furnishing uniforms and all other official equipment prescribed by Department regulations as necessary and requisite in the performance of duty, there is hereby authorized to be appropriated a sum for each member of the Fire Department of the District of Columbia, to be expended subject to rules and regulations to be prescribed by the Mayor of the District of Columbia.

(May 25, 1926, 44 Stat. 635, ch. 381; Apr. 15, 2008, D.C. Law 17-147, § 3, 55 DCR 2558.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-306. 1973 Ed., § 4-406.

Effect of amendments. — D.C. Law 17-147 deleted “not exceeding \$75 per annum” following “sum”.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of FEMS Uniformed Members Labor Day Fundraising for Muscular Dystrophy Exemption Emergency Act of 2011 (D.C. Act 19-114, July 28, 2011, 58 DCR 6538).

Legislative history of Law 17-147. — For Law 17-147, see notes following § 5-401.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-407. Resignation without notice; engaging in strike; conspiracy to obstruct operations of Department.

(a) No officer or member of said Fire Department, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the Mayor of the District of Columbia, unless he shall have given the said Mayor 1 month previous notice, in writing, of such intention.

(b) No member of the Fire Department of the District of Columbia shall directly or indirectly engage in any strike of such Department. Upon sufficient proof to the Mayor of the District of Columbia that any member of the Fire Department of the District of Columbia has violated the provisions of this subsection, it shall be the duty of the Mayor of the District of Columbia to immediately discharge such member from the service.

(c) Any member of the Fire Department of the District of Columbia who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the Fire Department of the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$300 or by imprisonment of not more than 6 months, or by both.

(June 20, 1906, 34 Stat. 315, ch. 3443, § 5; Jan. 24, 1920, 41 Stat. 398, ch. 54, § 2; July 31, 1939, 53 Stat. 1143, ch. 397.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-307. 1973 Ed., § 4-407.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-408. Firefighting Division — Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members of the Firefighting Division of the Fire Department of the District of Columbia, the workday of any workweek shall be considered to be 12 hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the Firefighting Division, the following formula shall be used:

(1) During the day shift of 10 hours, one and two-tenths hours of leave shall be charged for each hour taken;

(2) During the night shift of 14 hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth.

(Oct. 5, 1961, 75 Stat. 832, Pub. L. 87-399, § 6.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-308.
1973 Ed., § 4-408a.

§ 5-409. Firefighting Division — Accrual of annual leave; adjustment of accumulated leave; transfers; maximum accumulations.

(a) In lieu of the annual leave to which officers and members of the Firefighting Division of the Fire Department of the District of Columbia are entitled under the provisions of §§ 6302 to 6305, and 6310 of Title 5, United States Code, such officers and members shall be entitled to annual leave which shall accrue as follows:

(1) Four and eight-tenths hours for each full biweekly pay period in the case of officers and members with less than 3 years service;

(2) Seven and five-tenths hours for each full biweekly pay period in the case of officers and members with 3 but less than 15 years service;

(3) Nine and six-tenths hours for each biweekly pay period in the case of officers and members with 15 years or more service.

(b) Accumulated annual leave to the credit of each officer and member of such Firefighting Division shall be adjusted by applying a four fifths factor so that each officer and member of such Firefighting Division shall be given credit for four fifths of a day of leave for each day of such accumulated annual leave, and thereafter accumulated annual leave credited to him pursuant to §§ 6301 to 6305 and 6307 to 6311 of Title 5, United States Code, shall be similarly adjusted when an officer or member is transferred to the Firefighting Division from another agency or from another division of the Fire Department.

(c) When an officer or member of such Firefighting Division is transferred to another agency or to another division of the Fire Department whose employees are entitled to annual leave with pay pursuant to §§ 6301 to 6305 and 6307 to 6311 of Title 5, United States Code, the reverse of the formula in subsection (b)

of this section shall be applied for the purpose of adjusting accumulated annual leave.

(d) For computation on an hourly basis, all adjusted days of annual leave or fractions thereof, as provided in subsections (b) and (c) of this section, and days of sick leave shall be multiplied by 12 to determine the number of hours of annual or sick leave to which each such officer or member of such Firefighting Division shall be entitled, and the number of hours of annual or sick leave shall be divided by 12 to determine the number of days, or fraction thereof, of annual or sick leave to which such officer or member of such Firefighting Division shall be entitled.

(e) Notwithstanding any provision in any other law, the amount of annual leave accumulated on the effective date of this section, if 30 days or more, shall, upon conversion to the new total in accordance with this section, be the maximum accumulation authorized; provided, that if the amount of annual leave accumulated before the conversion is less than 30 days on the effective date of this section, then, after conversion to the new total, leave which is not used shall accumulate for use in succeeding years until it totals no more than 24 days at the beginning of the 1st complete biweekly pay period.

(Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 4.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-309.
1973 Ed., § 4-408b.

References in text. — The “effective date of this section,” referred to twice in subsection (e), is prescribed by § 5 of the Act of September 25, 1962, 76 Stat. 596, Pub. L. 87-697.

§ 5-409.01. Paramedic and emergency medical technician lateral transfer to Fire and Emergency Medical Services Department.

(a) Notwithstanding any other law or regulation, the Mayor is authorized to provide for the transfer of Fire and Emergency Medical Services Department personnel holding valid certificates as paramedics or emergency medical technicians, to be uniformed firefighters.

(1) Transfer shall be to the firefighter step and class with a rate of pay closest to, but not lower than, the rate of pay earned by the employee prior to transfer.

(2) Transferred employees may elect to participate in the District of Columbia Police Officers’ and Fire Fighters’ Retirement Program established pursuant to Chapter 9 of Title 1 [§ 1-901.01 et seq.]. (“Program”).

(3) Transfer is conditioned on the transferred employee meeting the requirements for entry-level firefighters, including meeting established medical standards, undergoing a background check, and successfully completing a physical abilities test and the firefighting training program.

(4) Transferred employees are required to meet citizenship requirements set forth by law or regulation.

(5) Maximum age limitations for appointment shall not apply to transferred employees.

(a-1) [Not funded].

(b) The Mayor, pursuant to subchapter I of Chapter 2 of Title 1, may issue rules to implement the provisions of this title [section].

(Oct. 3, 2001, D.C. Law 14-28, § 202, 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 37(a), 51 DCR 881; Mar. 31, 2009, D.C. Law 17-356, § 2, 56 DCR 1614.)

Effect of amendments. — D.C. Law 15-105, in subsec. (a)(2), validated a previously made technical correction.

D.C. Law 17-356, in subsec. (a), substituted “technicians, or All Hazards/Emergency Medical Services (“EMS”) Specialists,” for “technicians” in the lead-in language and rewrote par. (2); and added subsec. (a-1). Prior to amendment, par. (2) of subsec. (a) read as follows: “(2) Transferred employees may elect to participate in the Police Officers and Fire Fighters’ Retirement Fund pursuant to §

Emergency legislation. — For temporary (90 day) addition of section, see § 202 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 17-356. — Law 17-356, the “Paramedic and Emergency Medical Technician Transition Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-768 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 2, 2008, respectively. Approved without the signature of the Mayor on February 2, 2009, it was assigned Act No. 17-723 and transmitted to both Houses of Congress for its review. D.C. Law 17-356 became effective on March 31, 2009.

Editor’s notes. — Section 4 of D.C. Law 17-356 provided that this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-356 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-356, are not in effect.

§ 5-410. Restrictions on leaving District; or being absent from duty.

No member of the Fire Department of the District of Columbia shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission.

(July 25, 1956, 70 Stat. 647, ch. 726, § 2; Aug. 21, 1964, 78 Stat. 583, Pub. L. 88-471, § 6(f); Sept. 30, 2004, D.C. Law 15-194, § 1201(b), 51 DCR 9406.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-310. 1973 Ed., § 4-409a.

Effect of amendments. — D.C. Law 15-194 deleted the second sentence which had read:

“Nothing in this section shall be construed to limit the right of officers and members of the Fire Department to reside anywhere within the Washington, District of Columbia, Metropolitan District.”

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-411. Extra equipment authorized for volunteer fire organization.

The Mayor of the District of Columbia is authorized to install under such rules and regulations as the Council of the District of Columbia may prescribe, in any suburb of the said District, such extra apparatus and appliances belonging to the Fire Department of the District of Columbia as may, in his opinion, be available for the use of any volunteer fire organization which may be created in such suburb; and such apparatus and appliances shall be maintained in proper condition for service by the purchase of the necessary supplies out of the appropriations provided for the Fire Department of the District of Columbia.

(May 26, 1908, 35 Stat. 298, ch. 198.)

Prior Codifications. — 1981 Ed., § 4-311.
1973 Ed., § 4-411.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(109) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-412. Use of certain buildings granted.

The right of use and occupancy of the buildings and appurtenances known as the Union, Franklin, Columbia, and Anacostia Engine Houses, granted to the City of Washington for the purposes of the Fire Department, shall continue during the pleasure of Congress so long as used for such purposes.

(R.S., D.C., § 192; Feb. 27, 1877, 19 Stat. 253, ch. 69, § 2.)

Prior Codifications. — 1981 Ed., § 4-312. 1973 Ed., § 4-412.

§ 5-413. Construction of apparatus.

On and after June 29, 1956, the Mayor of the District of Columbia in his discretion may authorize the construction, in whole or in part, of firefighting apparatus in the Fire Department repair shop.

(June 29, 1956, 70 Stat. 443, ch. 479, § 1.)

Prior Codifications. — 1981 Ed., § 4-313.
1973 Ed., § 4-413.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-414. Reciprocal agreements for mutual aid; availability of personnel and equipment to federal government; service performed in line of duty.

(a) The Council of the District of Columbia is hereby authorized in its discretion to enter into and to renew reciprocal agreements, for such period as it deems advisable, with the appropriate county, municipal, and other governmental units in Prince George's and Montgomery Counties, Maryland, and Arlington and Fairfax Counties, Virginia, with the City of Alexandria, Virginia, with the City of Falls Church, Virginia, and with incorporated or unincorporated fire departments, fire companies, and organizations of firemen in such Counties and Cities, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of firefighting personnel and equipment, by and for the District of Columbia and such Counties and Cities, for the extinguishment of fires and for the preservation of life and property in emergencies, in the District and in such Counties and Cities.

(b) The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall:

(1) Waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement; and

(2) Indemnify and save harmless the other parties to such agreement from all claims by 3rd parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

(c) The Mayor of the District of Columbia is hereby authorized to make available to the federal government personnel and equipment of the Fire Department of the District to extinguish fires, and to save lives, on property of the federal government in Prince George's and Montgomery Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the City of Alexandria, Virginia; and the City of Falls Church, Virginia.

(d) For the purposes of subchapter I of Chapter 7 of this title, service performed by any officer or member of the Fire Department of the District of Columbia under any mutual-aid agreement entered into by the District pursuant to this section, service performed by any officer or member of the Fire Department of the District of Columbia at any other city, area, municipality, or other location where they shall have been directed to respond for the purpose of saving lives, extinguishing fires, or preserving property on orders of the Mayor of the District of Columbia or of the Fire Chief of said Fire Department or his acting designee, and service performed under subsection (c) of this section by any such officer or member in extinguishing fires, or saving lives, on

property of the federal government, shall be held and considered to be service performed in line of duty.

(Aug. 14, 1950, 64 Stat. 441, ch. 706, §§ 1-4; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88-473, § 1.)

Prior Codifications. — 1981 Ed., § 4-314. 1973 Ed., § 4-414.

Editor's notes. — Office of Chief Engineer abolished: See Historical and Statutory Notes following § 5-402.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(110) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-415. Services to District institutions located outside the District.

The Mayor of the District of Columbia is authorized to make provisions and payment for the furnishing of fire prevention and fire protection services to District of Columbia government institutions located outside the District of Columbia.

(Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 8.)

Prior Codifications. — 1981 Ed., § 4-315. 1973 Ed., § 4-415.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-416. Emergency ambulance service fees.

(a) The Mayor, with the approval of the Council by resolution, and after the Council holds a public hearing, may establish from time to time a fee to be charged for transportation services provided by the emergency ambulance service of the Fire and Emergency Medical Services Department ("Department") in such amount as may be reasonable in consideration of the interests of the public and the persons required to pay the fee, and in consideration of the approximate cost of furnishing such services; provided, that no one shall be denied the services because of his or her inability to pay and further provided that no one shall be questioned about his or her ability to pay at the time the services are requested.

(b)(1) A health care facility shall reimburse the Department for the cost of

emergency ambulance services, as determined under subsection (a) of this section, incurred by a patient resident of the health care facility if the health care facility requests ambulance transport services from the Department and the patient's healthcare insurance denies payment for the ambulance transport after a determination that the transportation did not meet the medical necessity standard as provided in § 410.40(d) of Title 42 of the Code of Federal Regulations.

(2) For the purposes of this subsection, the term:

(A) "Ambulance" means any publicly owned vehicle specially designed, constructed, modified, or equipped for use as a means for transporting patients in a medical emergency or any publicly owned vehicle that is advertised, marked, or in any way held out as a vehicle for the transportation of patients in a medical emergency.

(B) "Health care facility" shall have the same meaning as provided in § 44-1051.02(5).

(Apr. 19, 1977, D.C. Law 1-124, § 502, 23 DCR 8749; Apr. 15, 2008, D.C. Law 17-147, § 4, 55 DCR 2558; May 26, 2011, D.C. Law 18-373, § 2, 58 DCR 613.)

Prior Codifications. — 1981 Ed., § 4-316.
1973 Ed., § 4-416.

Effect of amendments. — D.C. Law 17-147 substituted "The Mayor, with the approval of the Council by resolution, and after the Council holds a public hearing, may" for "The Mayor of the District of Columbia is authorized, after a public hearing, to".

D.C. Law 18-373 designated the existing text as subsec. (a); in subsec. (a), substituted "emergency ambulance service of the Fire and Emergency Medical Services Department ('Department')" for "Emergency Ambulance Service of the Fire Department"; and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 102 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 102 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 1-124. — Law 1-124, the "Revenue Act for Fiscal Year 1978," was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-147. — For Law 17-147, see notes following § 5-401.

Legislative history of Law 18-373. — Law 18-373, the "Health and Safety 911 Abuse Prevention Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-692, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 12, 2011, it was assigned Act No. 18-682 and transmitted to both Houses of Congress for its review. D.C. Law (Act 18-682) became effective on May 26, 2011.

Short title. — Short title: Section 3003 of D.C. Law 17-219 provided that subtitle B of title III of the act may be cited as the "Ambulance Fee Act of 2008".

Mayor's Orders. — Emergency Ambulance Division established: Mayor's Order 81-233a, dated November 9, 1981, established an Emergency Ambulance Division in the Fire Department. The Order set forth the functions and supervision of the Division.

Editor's notes. — Section 3006 of D.C. Law 17-219 provided: "The Mayor shall explore all reasonable options for billing Medicaid and Medicare for costs of ambulance services. If the Mayor cannot raise \$3.5 million from Medicaid and Medicare billing, the Mayor shall issue rules pursuant to section 502 of the Revenue Act for Fiscal Year 1978, effective April 19, 1977 (D.C. Law 1-124; D.C. Official Code § 5-416), effective October 1, 2008, to increase ambulance fees to an amount sufficient to raise up to \$3.5 million in revenue in fiscal year 2009 and fiscal year 2010. The rules shall be submitted to the Council not later than September 15, 2008."

§ 5-417. Arson reporting.

(a) If the Fire Marshal or any agency empowered to investigate the cause of, or circumstances attendant upon, a fire loss involving real or personal property within the District of Columbia or empowered to institute criminal prosecutions for criminal acts causing, or related to, a fire loss has reason to believe that a fire was caused by other than accidental means, the Fire Marshal or such authorized agency may require, by written demand, any insurer investigating a fire loss to release any relevant information in its possession relating to that fire loss. Relevant information may include, but is not limited to:

- (1) The insurance policy in force;
- (2) Applications for an insurance policy;
- (3) The premium payments record;
- (4) The history of previous claims made; and

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(b) Whenever an insurer has reason to believe that a fire loss in which it has an interest may have been caused by other than accidental means, the insurer shall, for the purpose of having the fire loss investigated, notify the Fire Marshal or an authorized agency in writing and furnish the Fire Marshal or such agency with all relevant information acquired during its investigation of the fire loss.

(c) No insurer (or person acting on behalf of an insurer) who in good faith furnished information pursuant to subsection (a) or (b) of this section shall be liable therefor.

(d) Any information or evidence furnished pursuant to subsection (a) or (b) of this section shall be held in confidence by and among the Fire Marshal and authorized agencies, except that such information or evidence may be released in a criminal or civil proceeding in accordance with applicable court rules.

(e) Whoever shall knowingly: (1) refuse to release any information requested pursuant to subsection (a) of this section; (2) fail to notify or supply information to the Fire Marshal or an authorized agency pursuant to subsection (b) of this section; or (3) fail to hold in confidence information required to be held in confidence in accordance with the provisions of subsection (d) of this section shall be fined not more than \$10,000.

(June 19, 1982, D.C. Law 4-19, § 2(a)-(e), 29 DCR 1952.)

Cross references. — Administrative procedure, freedom of information, exemptions from disclosure, see § 2-534.

Prior Codifications. — 1981 Ed., § 4-317.

Legislative history of Law 4-119. — Law 4-119, the “District of Columbia Arson Reporting Immunity Act of 1982,” was introduced in

Council and assigned Bill No. 4-135, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on May 4, 1982, it was assigned Act No. 4-182 and transmitted to both Houses of Congress for its review.

§ 5-417.01. Fire and arson investigation — Authority generally; authority to enter and examine; arrest and warrant powers.

(a) The Fire Chief, the Fire Marshal, and his authorized representative shall have the authority to investigate the cause, origin, and circumstances of every fire, explosion, or hazardous materials emergency in which the Fire Department has a reasonable interest. When the Fire Chief, the Fire Marshal, or his authorized representative has reason to believe that a fire, explosion, or hazardous materials incident may be the result of a violation of any law, he shall immediately take custody of and safeguard all physical evidence in connection therewith, and shall have the authority to prohibit the disturbance or removal of any material, substance, device, or utility in, or upon, any building or property where the emergency occurred until such time as the investigation of the incident is complete; provided, however, that the Metropolitan Police Department shall be the primary investigative agency in fires, explosions, and hazardous materials incidents involving critical injury, death, or assaults with intent to kill.

(b) The Fire Chief, the Fire Marshal, or his authorized representative shall have the authority at all times, in performance of the duties imposed by the provisions of this section, to enter upon or examine any area, building or premises, vehicle or other thing when there is probable cause to believe that fires or attempts to cause fires exist or which at the time are burning. He shall have the authority to enter, at any time, any building or property adjacent to that on which the fire or attempt to cause fires occurred, should he deem it necessary in the proper discharge of his duties, and may, at his discretion, take full control and custody of such buildings and premises and place such person in charge thereof as he may deem proper until his examination and investigation shall be complete.

(c) The Fire Marshal and such other personnel, as are designated in writing by the Fire Chief, shall have and exercise and are hereby invested with, the same general police powers including arrest powers as regular members of the Metropolitan Police Department for the express purpose of enforcing the fire safety laws in effect in the District of Columbia, including, but not limited to, this section. This power shall extend to any arrest, the securing of warrants pursuant to Chapter 5 of Title 23, or other lawful action necessary to permit the peaceful completion of any lawful action by the Fire Department; provided, that the Fire Marshal and other designated arson investigators, shall have successfully completed a course of training in the safe handling of firearms and the use of deadly force, and each person shall be qualified to use a firearm according to the standards applicable to officers of the Metropolitan Police Department. The employee may not carry a firearm in the course of official duties unless designated by the Fire Chief in writing as having the authority to carry a firearm. The Fire Chief shall issue written guidelines pertaining to the authority to carry firearms, the appropriate use of firearms, firearms issuance and security, the use of force including prohibitions on the use of the chokehold pursuant to subchapter XIII of Chapter 1 of this title, searches and seizures, and arrests.

(Mar. 26, 1999, D.C. Law 12-176, § 2, 45 DCR 5662.)

Prior Codifications. — 1981 Ed., § 4-317.1.

Emergency legislation. — For temporary addition of section, see § 2 of the Arson Investigators Emergency Amendment Act of 1998 (D.C. Act 12-406, July 13, 1998, 45 DCR 4388), § 2 of the Arson Investigators Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-466, October 28, 1998, 45 DCR 7838), see § 2 of the Arson Investigators Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-539, December 24, 1998, 45 DCR 297).

Legislative history of Law 12-176. — Law 12-176, the “Arson Investigator Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-485, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1998 and June 2, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-418 and transmitted to both Houses of Congress for its review. D.C. Law 12-176 became effective on March 26, 1999.

§ 5-418. Cadet program — Authorized; purpose; preference for appointment; appropriations.

(a) The Chief of the Fire and Emergency Medical Services Department may establish a cadet program for the purpose of instructing, training, and exposing interested persons, primarily young adults residing in the District of Columbia, to the operations of the Fire and Emergency Medical Services Department and the duties, tasks, and responsibilities of serving as a dual-trained firefighter/paramedic/emergency medical technician with the Fire and Emergency Medical Services Department. The Fire Chief shall establish performance measures for the program.

(b) A person successfully completing the required training and service in a cadet program established pursuant to this section shall be accorded full preference for appointment as a member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department, if the person shall have met all other requirements pertaining to membership in the chosen Department.

(c) There may be appropriated the funds necessary for the administration of this section.

(Mar. 9, 1983, D.C. Law 4-172, § 2(b)-(d), 29 DCR 5745; Sept. 30, 2004, D.C. Law 15-194, § 402(a), (b), 51 DCR 9406.)

Cross references. — Cadet training programs, funding and administration, see § 38-912.

Section references. — This section is referred to in §§ 5-109.02 and 5-419.

Prior Codifications. — 1981 Ed., § 4-318.

Effect of amendments. — D.C. Law 15-194 rewrote subsec. (a); and in subsec. (b), substituted “Fire and Emergency Medical Services Department” for “District of Columbia Fire Department”. Prior to amendment, subsec. (a) had read as follows: “(a) The Chief of the District of Columbia Fire Department may establish a firefighter cadet program for the purpose of instructing, training, and exposing interested persons, primarily young adults residing in the District of Columbia, to the operations of the

District of Columbia Fire Department and the duties, tasks, and responsibilities of serving as a firefighter with the District of Columbia Fire Department.”

Legislative history of Law 4-172. — Law 4-172, the “Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-419. Cadet program — Rules.

The Mayor or the Mayor's designated agent may issue rules necessary for the implementation and operation of the cadet programs established pursuant to §§ 5-109.01 and 5-418.

(Mar. 9, 1983, D.C. Law 4-172, § 6, 29 DCR 5745.)

Prior Codifications. — 1981 Ed., § 4-319. legislative history of D.C. Law 4-172, see Historical and Statutory Notes following § 5-418.

Legislative history of Law 4-172. — For

historical and Statutory Notes following § 5-418.

Subchapter II. Fire and Emergency Medical Services Training.

PART A.

TRAINING FOR NON-DISTRICT PERSONNEL.

§ 5-431. Fire and Emergency Medical Services training for non-District of Columbia personnel.

(a) The Mayor may provide training to non-District of Columbia government agencies, organizations, and individuals through the Fire and Emergency Medical Services Department ("Department"), including hazardous materials training, firefighting training, emergency medical technician training, fire extinguisher safety training, and cardiopulmonary resuscitation training.

(b) The Mayor may impose fees to cover the costs of any training provided under subsection (a) of this section. The fees shall be established in accordance with Chapter 5 of Title 2.

(Nov. 13, 2003, D.C. Law 15-39, § 702, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 702 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 702 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 5-101.04.

Short title. — Short title of title VII of Law

15-39: Section 701 of D.C. Law 15-39 provided that title VII of the act may be cited as the Fire and Emergency Medical Services Training Act of 2003.

Delegation of Authority. — Delegation of Authority Pursuant to Title VII of the Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003, effective September 22, 2003 (D.C. Act 15-149; 50 DCR 8389), see Mayor's Order 2004-7, January 14, 2004 (51 DCR 873).

§ 5-432. Establishment of Fire and Emergency Medical Services Training Fund.

(a) There is established a lapsing Fire and Emergency Medical Services Training Fund ("Fund"), which shall be separate from the General Fund of the

District of Columbia. All fees generated under § 5-431(b) shall be deposited into the Fund, and any interest earned on these deposits shall be credited to the Fund.

(b) The monies in the Fund shall be expended solely and exclusively to cover the costs directly associated with operating the Department's training programs, and shall be used to acquire improved technology and equipment, to hire, train, and certify staff, and to otherwise improve the quality of the training programs offered by the Department.

(c) Repealed.

(d) Nothing in this section shall be construed as prohibiting or limiting the allocation of additional funds from the revenues of the District of Columbia for the purposes designated in subsection (b) of this section.

(Nov. 13, 2003, D.C. Law 15-39, § 703, 50 DCR 5668; Sept. 14, 2011, D.C. Law 19-21, § 9046, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (a), substituted "lapsing" for "nonlapsing, revolving"; and repealed subsec. (c), which had read as follows: "(c) All monies deposited in the Fund shall be appropriated without fiscal year limitation pursuant to an act of Congress. Excluding monies collected in the current year, any money deposited in the Fund in the year prior to the current year and the interest earned on that money remaining in the Fund after the payment of the costs accrued in the prior year, less 10% of the remainder amount that shall be retained as a reserve operating balance, shall be transferred or re-

vert to the General Fund of the District of Columbia."

Emergency legislation. — For temporary (90 day) addition, see § 703 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 703 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 5-101.04.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 5-405.

PART B.

EDUCATION AND TRAINING PROGRAM.

§ 5-441. Fire and Emergency Medical Services education and training program; certification of firefighters, paramedics, and emergency medical technicians.

(a) The Chief of the Fire and Emergency Medical Services Department shall design an education and training program that encompasses entry-level and in-service training and addresses issues such as skills with specialized equipment acquired to address special hazards, knowledge of new construction techniques, and emergency medicine skills for target audiences, such as persons with disabilities, the elderly, and very young. The education and training program shall be based upon the department's mission and operational performance measures.

(b) The Fire Chief, in close coordination with the Medical Director, shall develop and implement a program of certification for firefighters, paramedics, and emergency medical technicians.

(c) For fiscal years 2011 and 2012, no officer or member of the Fire and Emergency Medical Services Department shall be detailed to Emergency Medical Technician classes for more than 60 days.

(Sept. 30, 2004, D.C. Law 15-194, § 202, 51 DCR 9406; Apr. 24, 2007, D.C. Law 16-305, § 17, 53 DCR 6198; Apr. 15, 2008, D.C. Law 17-147, § 5, 55 DCR 2558; Sept. 24, 2010, D.C. Law 18-223, § 3024, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 3014, 58 DCR 6226.)

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted “persons with disabilities, the” for “the disabled”.

D.C. Law 17-147 inserted “, in close coordination with the Medical Director,” following “Fire Chief”.

D.C. Law 18-223 added subsec. (c).

D.C. Law 19-21, in subsec. (c), substituted “fiscal years 2011 and 2012” for “fiscal year 2011”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3024 of Fiscal Year 2011 Budget Support Emergency

Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 5-119.10.

Legislative history of Law 17-147. — For Law 17-147, see notes following § 5-401.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 5-405.

Legislative history of Law 19-21. — For Law 19-21, see notes following § 5-405.

Subchapter III. Fire and Emergency Medical Services Agility Testing.

§ 5-451. Physical examinations and agility standards.

(a) All sworn members of the Fire and Emergency Medical Services Department shall be required to pass, at least biennially, a physical examination and a physical agility test. The physical examination shall be performed by a physician at the Police and Fire Clinic using current medical standards adopted after consultation with medical professionals within 180 days of September 30, 2004. The physical agility testing shall be based on full-duty physical performance standards adopted within 180 days of September 30, 2004.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section within 180 days of September 30, 2004.

(Sept. 30, 2004, D.C. Law 15-194, § 721, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

CHAPTER 5. SALARIES.

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Subchapter I. General.

§ 5-501.01. Increase denied for unsatisfactory service; removal for inefficiency; additional compensation for outstanding efficiency.

No annual increase in salary shall be paid to any person who, in the judgment of the Mayor of the District of Columbia, has not rendered satisfactory service, and any private who fails to receive such annual increase for 2 successive years shall be deemed inefficient and forthwith removed from the service by the Mayor; provided, that under such rules and regulations as the Council of the District of Columbia shall promulgate, the Chief of Police and

the Fire Chief of the Fire Department shall select and report to the Mayor from time to time the names of privates and sergeants in each Department who by reason of demonstrated ability may be considered as possessed of outstanding efficiency, and the Mayor is authorized and directed to grant to not exceeding 10% of the authorized strength, respectively, of such privates and sergeants in each Department additional compensation at the rate of \$5 per month; provided further, that the Mayor may withdraw such compensation at any time and remove any name or names from among such selections.

(July 1, 1930, 46 Stat. 840, ch. 783, § 4.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Protection of life, health, and property, regulations, see § 1-303.03.

Prior Codifications. — 1981 Ed., § 4-401. 1973 Ed., § 4-802.

Editor's notes. — Office of Major and Superintendent of Metropolitan Police abolished: See Historical and Statutory Notes following § 5-105.01.

Office of Chief Engineer abolished: See Historical and Statutory Notes following § 5-402.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(111) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-501.02. Computation of rates of compensation.

(a) For all pay computation purposes affecting employees covered by this act or the District of Columbia Police and Firemen's Salary Act of 1958, basic per annum rates of compensation established by this act or the District of Columbia Police and Firemen's Salary Act of 1958, shall be regarded as payment for employment during 52 basic administrative workweeks.

(b)(1) Whenever for any such purpose it is necessary to convert a basic annual rate established by this act or the District of Columbia Police and Firemen's Salary Act of 1958 to a basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by 52 or 26, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by 5 or 10, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by 2 to derive a one-half daily rate;

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate;

(E) In the case of the Firefighting Division of the Fire Department of the District of Columbia:

(i) A biweekly rate shall be divided by 2 to derive a weekly rate;

(ii) The weekly rate shall be divided by the number of workdays in the average established workweek to arrive at a daily rate;

(iii) A daily rate shall be divided by 2 to derive a one-half daily rate; and

(iv) An hourly rate shall be determined by dividing the daily rate of pay by 12, except for the purpose of computation of holiday pay; and

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the Firefighting Division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(2) All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

(c) For all officers and employees referred to in this act, or the District of Columbia Police and Firemen's Salary Act of 1958, each pay period shall cover 2 administrative workweeks except that with respect to employees of the Fire Department the 1st pay period shall be for the period July 1 to July 11, 1953, inclusive.

(June 20, 1953, 67 Stat. 76, ch. 146, title IV, § 405; July 20, 1953, 67 Stat. 182, ch. 231, § 1; June 25, 1956, 70 Stat. 338, ch. 446, § 1; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 5; Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 502(b); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 5; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 3.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-405.
1973 Ed., § 4-821.

References in text. — "This act," referred to

throughout this section, means the Act of June 20, 1953.

The District of Columbia Police and Firemen's Salary Act of 1958, referred to throughout this section, is codified in § 5-541.01 et seq.

Subchapter II. Holiday Compensation.

§ 5-521.01. Compensation for working on holidays.

Under regulations promulgated by the Council of the District of Columbia, each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia, when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation; provided, that for the purpose of this subchapter, each such officer or member who works 8 hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting 30 minutes or more as a full hour; provided further, that, when an officer or member is authorized or directed to work on a holiday and such officer or member is required to work longer than his regular tour of duty, he shall be compensated for such overtime in

accordance with the provisions of subsection (e) of § 5-1304. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, and the United States Park Police Force shall be available for payment of the additional compensation authorized by this subchapter.

(Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 4; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89-282, § 3; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(1)(A).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in § 5-521.02.

Prior Codifications. — 1981 Ed., § 4-402.
1973 Ed., § 4-807.

Effect of amendments. — Pub. L. 111-282, in the second sentence, deleted “the United States Secret Service Uniformed Division,” following “Fire Department of the District of Columbia.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(112)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-521.02. “Holiday” defined.

As used in § 5-521.01, the word “holiday” means the following: The 1st day of January, the 3rd Monday in February, the 4th day of July, the last Monday in May, the 1st Monday in September, the 2nd Monday in October, the 4th Monday in October, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Council of the District of Columbia, and with respect to officers and members of the United States Park Police force, such other holidays as may be designated by executive order.

(Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 4(b); Sept. 3, 1974, 88 Stat. 1038, Pub. L. 93-407, title I, § 102; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(1)(B).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in § 5-405.

Prior Codifications. — 1981 Ed., § 4-403.
1973 Ed., § 4-808.

Effect of amendments. — Pub. L. 111-282

substituted “and with respect to officers and members of the United States Park Police force” for “and with respect to officers and members of the United States Secret Service Uniformed Division and the United States Park Police force”.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(113) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-521.03. Applicability of subchapter to United States Secret Service Uniformed Division and United States Park Police force.

The provisions of this subchapter shall be applicable to the United States Park Police force under regulations promulgated by the Secretary of the Interior.

(Oct. 24, 1951, 65 Stat. 607, ch. 544, § 3; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(1)(C).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.
Prior Codifications. — 1981 Ed., § 4-404. 1973 Ed., § 4-809.

Effect of amendments. — Pub. L. 111-282 substituted “shall be applicable to the United

States Park Police force under regulations promulgated by the Secretary of the Interior” for “shall be applicable to the United States Secret Service Uniformed Division and the United States Park Police force, under regulations promulgated by the Secretary of the Treasury and the Secretary of the Interior, respectively”.

Subchapter III. Salary Classifications.

PART A.

SALARY SCHEDULES.

§ 5-541.01. Salary schedule; maximum compensation permitted.

(a) Except as provided in subsections (a-1) and (b) of this section, the annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

Salary class and title	Service Step								
	1	2	3	4	5	6	7	8	9
Class 1: Fire private, police private	\$12,296	\$12,667	\$13,282	\$13,897	\$14,877	\$15,863	\$16,478	\$17,093	\$17,707
Class 2: Fire inspector	14,019	14,877	15,741	16,600	17,458	18,322	19,181
Class 3: Detective, assistant pilot, assistant marine engineer	15,370	16,139	16,907	17,676	18,444	19,213	19,981
Class 4: Fire sergeant, police sergeant, detective sergeant	16,700	17,532	18,370	19,207	20,045	20,877

Salary class and title	Service Step								
	1	2	3	4	5	6	7	8	9
Class 5: Fire lieutenant, police lieutenant	19,303	20,273	21,237	22,202	23,166				
Class 6: Marine engineer, pilot ..	21,089	22,138	23,193	24,242					
Class 7: Fire captain, police captain	22,870	24,014	25,159	26,299					
Class 8: Battalion fire chief, police inspector	26,511	27,836	29,166	30,496					
Class 9: Deputy Fire Chief, Deputy Chief of Police	31,111	33,215	35,325	37,434					
Class 10: Assistant Chief of Police, Assistant Fire Chief	36,888	39,347	41,806						
Class 11: Repealed									

(a-1) The Chief of Police, effective January 2, 2007, and the Fire Chief, effective April 16, 2007, shall be paid in accordance with the DX Schedule for subordinate agency heads pursuant to § 1-610.52.

(b) Compensation may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule contained in subchapter II of Chapter 53 of Title 5, United States Code.

(c) Notwithstanding any other law or regulation, the annual rates of basic compensation of officers appointed pursuant to § 1-610.72 shall be established by the salary schedule established in subsection (a) of this section as modified pursuant to § 5-545.06a.

(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85-584, title I, § 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87-882, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88-426, title III, § 306(i)(6); Sept. 2, 1964, 78 Stat. 880, Pub. L. 88-575, title I, § 101; Nov. 13, 1966, 80 Stat. 1591, Pub. L. 89-810, title I, § 101; May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 1(a); May 27, 1968, 82 Stat. 141, Pub. L. 90-320, § 1(b); June 30, 1970, 84 Stat. 354, Pub. L. 91-297, title I, § 102; Dec. 7, 1970, 84 Stat. 1391, Pub. L. 91-530, § 3; Aug. 29, 1972, 86 Stat. 634, Pub. L. 92-410, title I, §§ 101, 102; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(1); Jan. 3, 1975, 88 Stat. 2173, Pub. L. 93-635, § 1; June 19, 1976, D.C. Law 1-73, § 2(1), 23 DCR 2807; Oct. 4, 2000, D.C. Law § 13-160, § 103(a), 47 DCR 4619; Oct. 18, 2007, D.C. Law 17-25, § 3, 54 DCR 8014; May 13, 2008, D.C. Law 17-154, § 6(a), 55 DCR 3678.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Merit system, pay rates and adjustments, see § 1-611.13.

Section references. — This section is referred to in §§ 5-543.01, 5-544.01, 5-545.01, 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, 5-561.01, and

Prior Codifications. — 1981 Ed., § 4-406. 1973 Ed., § 4-823.

Effect of amendments. — D.C. Law 13-160 added subsec. (c), relating to compensation for officers appointed pursuant to § 1-610.72.

D.C. Law 17-25 added subsec. (a-1).

D.C. Law 17-154, in subsec. (a), substituted

“subsections (a-1) and (b)” for “subsection (b)” in the lead-in language, and repealed classification “Class 11: Fire Chief, Chief of Police.” in the salary schedule; and added subsec. (a-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(a) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(a) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(a) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(a) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(a) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

For temporary (90 day) amendment of section, see § 3 of District of Columbia Sentencing and Criminal Code Revision Commission Emergency Amendment Act of 2007 (D.C. Act 17-72, July 20, 2007, 54 DCR 7401).

For temporary (90 day) addition, see § 4 of District of Columbia Sentencing and Criminal Code Revision Commission Emergency Amendment Act of 2007 (D.C. Act 17-72, July 20, 2007, 54 DCR 7401).

Legislative history of Law 1-73. — Law 1-73, the “District of Columbia Police and Fireman’s Salary Act Amendments of 1975,” was introduced in Council and assigned Bill No. 1-235, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on March 9, 1976, and March 23, 1976, respectively. Signed by the Mayor on April 30, 1976, it was assigned Act No. 1-109 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-160. — Law 13-160, the “Omnibus Police Reform Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for its review. D.C. Law 13-160 became effective on October 4, 2000.

Legislative history of Law 17-25. — Law 17-25, the “District of Columbia Sentencing and Criminal Code Revision Commission Amendment Act of 2007,” was introduced in Council and assigned Bill No. 17-137 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on June 21, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 25, 2007, it was assigned Act No. 17-87 and transmitted to both Houses of Congress for its review. D.C. Law 17-25 became effective on October 18, 2007.

Legislative history of Law 17-154. — For Law 17-154, see notes following § 5-105.01.

References in text. — The reference in (b) to “subchapter II of Chapter 53 of Title 5, United States Code” is codified at 5 U.S.C. §§ 5311 to 5318.

Editor’s notes. — Adjustment of salary schedule by Mayor: See Act of June 19, 1976, D.C. Law 1-73, § 4; Act of May 18, 1978, D.C. Law 2-76, § 2.

Retroactive compensation: See Act of August 14, 1964, 78 Stat. 431, Pub. L. 88-426, § 502; Act of September 2, 1964, 78 Stat. 800, Pub. L. 88-575, § 106; Act of November 13, 1966, 80 Stat. 1591, Pub. L. 89-810, § 104; Act of May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 7; Act of June 30, 1970, 84 Stat. 354, Pub. L. 91-297, § 109; Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410, § 116(a), (b); Act of September 3, 1974, 88 Stat. 1036, Pub. L. 93-407, § 104; Act of June 19, 1976, D.C. Law 1-73, § 3; Act of May 18, 1978, D.C. Law 2-76, § 3.

Metropolitan Police Department pay and benefit performance: Pursuant to §§ 2 and 3 of D.C. Law 6-145, the “Metropolitan Police Department Pay and Benefit Conformance Act of 1986,” effective September 13, 1986, the Council approved changes to the compensation system for career and executive service employees not covered by collective bargaining.

Group insurance: See Act of August 1, 1958, 72 Stat. 431, Pub. L. 85-584, § 508(b); Act of August 14, 1964, 78 Stat. 431, Pub. L. 88-426, § 501(d); Act of September 2, 1964, 78 Stat. 800, Pub. L. 88-575, § 107; Act of November 13, 1966, 80 Stat. 1591, Pub. L. 89-810, § 105; Act of May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 8; Act of June 30, 1970, 84 Stat. 354, Pub. L. 91-297, § 111; Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410, § 116(c); Act of September 3, 1974, 88 Stat. 1036, Pub. L. 93-407, § 104(c); Act of June 19, 1976, D.C. Law 1-73, § 3(c); Act of May 18, 1978, D.C. Law 2-76, § 3.

PART B.

METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES.

§ 5-542.01. Adjustments.

The rates of basic compensation of officers and members in active service on the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall be adjusted as follows:

(1) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a) or (b) of salary class 1 in the salary schedule in effect on the day next preceding such effective date shall be placed in and received basic compensation in salary class 1 in the salary schedule in effect on and after such date, and each such officer or member shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a) or (b) of salary class 1 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 1 in the salary schedule in effect on and after such date, and each such officer or member shall be placed in a service step as follows:

From—	To—
Class 1, subclass (a) or (b):	Class 1:
Longevity step A	Service step 7.
Longevity step B	Service step 8.
Longevity step C	Service step 9.

(2) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a) or (b) of salary class 2 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 2 in the salary schedule in effect on and after such date, and each shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a) or (b) of salary class 2 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 2 in the salary schedule in effect on and after such date, and each such officer or member shall be placed in a service step as follows:

From—	To—
Class 2, subclass (a) or (b):	Class 2:
Longevity step A	Service step 5.
Longevity step B	Service step 6.
Longevity step C	Service step 7.

(3) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of salary

class 3, 5, 6, 7, 8, or 9 in the salary schedule in effect on the day next preceding such effective date shall receive a rate of basic compensation at the corresponding scheduled service step and salary class in the salary schedule in effect on and after such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of salary class 3, 5, 6, 7, 8, or 9 in the salary schedule in effect on the day next preceding such effective date shall receive basic compensation at the corresponding salary class in the salary schedule in effect on and after such date, and each shall be placed in a service step as follows:

From—	To—
Class 3:	Class 3:
Longevity step A	Service step 5.
Longevity step B	Service step 6.
Longevity step C	Service step 7.
From—	To—
Class 5:	Class 5:
Longevity steps A and B	Service step 5.
From—	To—
Class 6, 7, 8, or 9:	Class 6, 7, 8, or 9:
Longevity steps A and B	Service step 4.

(4) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a), (b), or (c) of salary class 4 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 4 in the salary schedule in effect on or after such date, and each shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a), (b), or (c) of salary class 4 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 4 in the salary schedule in effect on and after such date, and each shall be placed in a service step as follows:

From—	To—
Class 4, subclass (a), (b), or (c):	Class 4:
Longevity step A	Service step 5.
Longevity steps B and C	Service step 6.

(5) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of salary class 10 or 11 in the salary schedule in effect on the day next preceding such effective date shall receive a rate of basic compensation at the corresponding scheduled service step and salary class in the salary schedule in effect on and after such date, except that any such officer or member who immediately prior to such date was serving in service step 4 of salary class 10 or in service step 3 of salary class 11 shall be placed in and receive basic compensation in a service step as follows:

From—	To—
Class 10:	Class 10:
Service step 4	Service step 3.
From—	To—
Class 11:	Class 11:
Service step 3	Service step 2.

(Aug. 1, 1958, 72 Stat. 482, Pub. L. 85-584, title II, § 201; Aug. 29, 1972, 86 Stat. 634, Pub. L. 92-410, title I, § 103.)

Cross references. — Merit system, application to police officers and firefighters, see 1-632.03.

Section references. — This section is referred to in §§ 5-1304, 5-545.03, 5-545.04, 5-545.05, and 5-54

Prior Codifications. — 1981 Ed., § 4-407.

1973 Ed., § 4-824.

References in text. — The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to throughout this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

§ 5-542.02. Additional compensation for helicopter pilot, bomb disposal, or scuba diving duty.

Each officer or member of the Metropolitan Police Force, including, notwithstanding any other law or regulation, each officer or member appointed pursuant to § 1-610.72, and United States Park Police force assigned on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972: (1) to perform the duty of a helicopter pilot; or (2) to render explosive devices ineffective or to otherwise dispose of such devices shall receive, in addition to his scheduled rate of basic compensation, \$2,270 per annum, except in the case of an officer or member of the United States Park Police, who shall receive a per annum amount equal to 7 percent of the sum of such officer's or member's rate of basic compensation plus locality pay adjustments, so long as he remains in such assignment. Further, each officer or member of the metropolitan police force assigned on or after August 29, 1972, to the Harbor Patrol division within the Metropolitan Police Department as scuba divers shall receive in addition to his or her scheduled rate of basic compensation, \$2,710 per annum so long as he or she remains in such assignment. The additional compensation authorized by this section shall be paid to an officer or member in the same manner as he is paid basic compensation to which he is entitled, except that when such an officer or member ceases to be in such an assignment, the loss of such additional compensation shall not constitute an adverse action for the purposes of § 7511 et seq. of Title 5 of the United States Code. No officer or member who receives the additional compensation authorized by this section may receive additional compensation under § 5-543.02.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 103; Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 104; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(2), (3); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Apr. 20, 1999, D.C. Law 12-252, § 2, 46 DCR 1127; Oct. 4, 2000, D.C. Law 13-160, § 103(b),

47 DCR 4619; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 906(b); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(A).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-408. 1973 Ed., § 4-825.

Effect of amendments. — D.C. Law 13-160, after “Metropolitan Police Force”, added “including, notwithstanding any other law or regulation, each officer or member appointed pursuant to § 1-611.72.”

Pub. L. 111-282 deleted “United States Secret Service Uniformed Division,” preceding “and United States Park Police force”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(b) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(b) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(b) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(b) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(b) of the Lateral Appointment of Law Enforcement Officers Congressional Re-

view Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

For temporary (90-day) amendment of section, see § 3(g) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(g) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(g) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(g) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 12-252. — Law 12-252, the “Hazardous Duty Compensation for Metropolitan Police Department Scuba Divers Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-142, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998 and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-593 and transmitted to both Houses of Congress for its review. D.C. Law 12-252 became effective on April 20, 1999.

Legislative history of Law 13-160. — For legislative history of D.C. Law 13-160, see Historical and Statutory Notes following § 5-541.01.

References in text. — The effective date of the Police and Firemen’s Salary Act Amendments of 1972, referred to in the first sentence of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

§ 5-542.03. Classification of aide to Fire Marshal.

The aide to the Fire Marshal shall be included as a fire inspector in salary class 2.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 203; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882; § 3(a); Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 105(a).)

Section references. — This section is referred to in §§ 5-543.01, 5-543.02, 5-545.01,

5-545.03, 5-545.04, 5-545.05, 5-545.06, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-409. 1973 Ed., § 4-826.

PART C.

METHOD OF APPOINTMENT, ADVANCEMENT, PROMOTION, AND DEMOTION.

§ 5-543.01. Minimum rate for original appointments; rates for reappointments.

(a) Except as provided in subsections (b) and (c) of this section, all original appointments of police and fire privates shall be made at the minimum rate set forth in the schedule in § 5-541.01, and the 1st year of service shall be probationary.

(b) Any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, or the United States Park Police force who separates from that force, Department, or Division, and who is subsequently reappointed to such force, Department, or Division within 3 years after the date of such separation shall receive any scheduled rate of basic compensation provided in salary class 1 of the salary schedule in § 5-541.01(a) which does not exceed the scheduled rate of basic compensation being paid at the time of such reappointment for the class and service step he had attained at the time of his separation. For purposes of this subsection, no additional compensation authorized by this subchapter shall be used in determining service step placement.

(c) Notwithstanding any other law or regulation, employees appointed pursuant to § 1-610.72 shall be appointed at a step of Class 1 consistent with that officer's law enforcement experience, without regard to any time in grade or prior Departmental service or incumbency requirements. Such employees shall serve an 18-month probationary period.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 301; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(4); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 4, 2000, D.C. Law § 13-160, § 103(c), 47 DCR 4619; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(B).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-410. 1973 Ed., § 4-827.

Effect of amendments. — D.C. Law 13-160, in subsec. (a), substituted "Except as provided in subsections (b) and (c) of this section," for "Except as provided in subsection (b)", and added subsec. (c), relating to employees appointed pursuant to § 1-610.72.

Pub. L. 111-282, in subsec. (b), deleted "United States Secret Service Uniformed Division," preceding "or United States Park Police force".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(c) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(c) of the Lateral Appointment of Law Enforcement Offi-

cers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(c) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(c) of the Lateral Appointment of Law Enforcement Officers Clarifying Emer-

gency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(c) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — For Law 13-160, see § 5-541.01.

§ 5-543.02. Technicians' positions.

(a) The Mayor of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, and the Secretary of the Interior, in the case of the United States Park Police force, are authorized to establish and determine, from time to time, the positions in salary classes 1, 2, and 4 to be included as technicians' positions.

(b) Each officer or member: (1) Who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972: (A) Was in a position assigned to subclass (b) of salary class 1 or 2 or subclass (c) of salary class 4; or (B) was in salary class 4 and was performing the duty of a dog handler; or (2) whose position is determined under subsection (a) of this section to be included in salary class 1, 2, or 4 on or after such date as a technician's position shall on or after such date receive, in addition to his scheduled rate of basic compensation, \$810 per annum, except in the case of an officer or member of the United States Park Police, who shall receive a per annum amount equal to 6 percent of the sum of such officer's or member's rate of basic compensation plus locality pay adjustments. An officer or member described in clause (1)(A) or (2) of this subsection shall receive the additional compensation authorized by this subsection until his position is determined under subsection (a) of this section not to be included in salary class 1, 2, or 4, as a technician's position or until he no longer occupies such position, whichever occurs first. An officer or member described in clause (1)(B) of this subsection shall receive such compensation until the position of dog handler is determined under subsection (a) of this section not to be included in salary class 4 as a technician's position or until he no longer performs the duty of dog handler, whichever first occurs. If the position of dog handler is included under subsection (a) of this section as a technician's position, an officer or member performing the duty of a dog handler may not receive both the additional compensation authorized for an officer or member occupying a technician's position and the additional compensation authorized for officers and members performing the duty of a dog handler.

(c) Each officer or member who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 was assigned as a detective sergeant in subclass (b) of salary class 4 shall, on or after such date, receive, in addition to his scheduled rate of basic compensation, \$595 per annum, except in the case of an officer or member of the United States Park Police, who shall receive a per annum amount equal to 6 percent, of the sum of such officer's or member's rate of basic compensation plus locality

pay adjustments so long as he remains in such assignment. Each officer or member who is promoted after such date to the rank of detective sergeant shall receive, in addition to his scheduled rate of basic compensation, \$595 per annum, except in the case of an officer or member of the United States Park Police, who shall receive a per annum amount equal to 6 percent of the sum of such officer's or member's rate of basic compensation plus locality pay adjustments, so long as he remains in such assignment.

(d) The additional compensation authorized by subsections (b) and (c) of this section shall be paid to an officer or member in the same manner as he is paid the basic compensation to which he is entitled.

(e) Whenever any officer or member (other than an officer or member of the United States Park Police) receiving additional compensation authorized by subsection (b) or (c) of this section is no longer entitled to receive such additional compensation, without a change in salary class, he shall receive, irrespective of any subsequent salary schedule or service step adjustment authorized by this subchapter, basic compensation equal to the sum of his existing scheduled rate of basic compensation and the amount of such additional compensation until his scheduled rate of basic compensation equals or exceeds such sum.

(f) The loss of the additional compensation authorized by subsection (b) or (c) of this section shall not constitute an adverse action for the purposes of § 7511 et seq. of Title 5 of the United States Code.

(g) Notwithstanding any other law or regulation, employees appointed pursuant to § 1-610.72 shall be eligible for the additional compensation in accordance with this section.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 302; Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 106; Sept. 3, 1974, 88 Stat. 1037, Pub. L. 93-407, title I, § 101(a)(5)-(7); Jan. 3, 1975, 88 Stat. 2174, Pub. L. 93-635, § 2; June 19, 1976, D.C. Law 1-73, § 2(3), 23 DCR 2807; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 4, 2000, D.C. Law 13-160, § 103(d), 47 DCR 4619; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 906(a); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(C).)

Section references. — This section is referred to in §§ 5-542.02, 5-543.04, 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-411. 1973 Ed., § 4-828.

Effect of amendments. — D.C. Law 13-160 added subsec. (g), relating to employees appointed pursuant to § 1-610.72.

Pub. L. 111-282, in subsec. (a), deleted "the Secretary of the Treasury, in the case of the United States Secret Service Uniformed Division," following "Columbia"; and, in subsecs. (b) and (c), deleted "the United States Secret Service Uniformed Division or" following "member of".

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 3(d) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(d) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(d) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(d) of the Lateral Appointment of

Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(d) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(d) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 1-73. — For legislative history of D.C. Law 1-73, see Historical and Statutory Notes following § 5-541.01.

Legislative history of Law 13-160. — For Law 13-160, see § 5-541.01.

References in text. — The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to in subsections (b) and (c) of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Accrual of cause of action.

Overtime pay.

Res judicata.

Accrual of cause of action.

Police officers did not forfeit FLSA claims arising within three-year statute of limitations from District of Columbia police department's failure to calculate their overtime based on enhanced pay owed to detective sergeants under the District of Columbia Code, even though their claims outside the limitations period were time-barred, since officers sought unpaid overtime for their entire tenure as detective sergeants, and thus their claims necessarily included a request for unpaid overtime during the three years before their suit was filed. *Figueroa v. District of Columbia Metro. Police Dep't*, 633 F.3d 1129, 2011 U.S. App. LEXIS 3168 (C.A.D.C. 2011).

Police officers' cause of action against police department for alleged violations of FLSA's minimum wage and overtime provisions based on department's failure to provide detective sergeant compensation as required by District of Columbia statute accrued when department failed to compensate officers at time they allegedly fulfilled the responsibilities of detective sergeants, rather than at time of department's nonpayment of arbitration award in favor of officers on issue of nonpayment of compensation, since there was nothing to prevent officers from prosecuting claims in federal court based on alleged violations of the FLSA rather than

following union grievance procedures. *Figueroa v. D.C. Metro. Police Dep't*, 658 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 90147 (2009), affirmed in part and reversed in part by, remanded by 633 F.3d 1129, 394 U.S. App. D.C. 232, 2011 U.S. App. LEXIS 3168, 78 Fed. R. Serv. 3d (Callaghan) 1045, 160 Lab. Cas. (CCH) P35872, 17 Wage & Hour Cas. 2d (BNA) 371 (2011).

Overtime pay.

The \$595 annual stipend under District of Columbia statute for detective sergeants was part of plaintiffs' regular pay rate and had to be included in FLSA overtime calculation; District contended that stipend was not part of their basic compensation but rather was additional payment that should not be so included, but FLSA mandated that regular rate include all remuneration for employment paid to, or on behalf of, employee unless it fell under one of eight expressly provided exclusions and District did not reference the exemptions, let alone argue that one of them applied to situation. *Figueroa v. District of Columbia*, 2012 WL 2367088 (2012).

Res judicata.

Police officers' claim against police department for alleged violation of the District of Columbia statute requiring payment of detective sergeant compensation arose from the same cause of action in previous arbitration proceeding in which officers contested department's nonpayment of detective sergeant compensation, as required for application of doctrine of res judicata or claim preclusion to bar

the claim, as claim before the arbitrator and claim set forth in officers' complaint were identical. *Figueroa v. D.C. Metro. Police Dep't*, 658 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 90147 (2009), affirmed in part and reversed in part by, remanded by 633 F.3d 1129, 394 U.S. App. D.C. 232, 2011 U.S. App. LEXIS 3168, 78 Fed. R. Serv. 3d (Callaghan) 1045, 160 Lab. Cas. (CCH) P35872, 17 Wage & Hour Cas. 2d (BNA) 371 (2011).

Parties to arbitration proceeding in which police officers contested police department's nonpayment of detective sergeant compensation were the same or in privity with parties in lawsuit alleging that department violated District of Columbia statute mandating payment of detective sergeant compensation, as required

for application of doctrine of res judicata or claim preclusion to bar claim asserted in suit, even though some police officers who were plaintiffs in the suit were not grievants in arbitration; officers absent from arbitration were department employees and union members, and they were therefore in privity with union and its members who were parties in arbitration. *Figueroa v. D.C. Metro. Police Dep't*, 658 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 90147 (2009), affirmed in part and reversed in part by, remanded by 633 F.3d 1129, 394 U.S. App. D.C. 232, 2011 U.S. App. LEXIS 3168, 78 Fed. R. Serv. 3d (Callaghan) 1045, 160 Lab. Cas. (CCH) P35872, 17 Wage & Hour Cas. 2d (BNA) 371 (2011).

§ 5-543.03. Service step adjustments.

(a) Except as provided in paragraph (5) of this section, each officer and member, if he has a current performance rating of "satisfactory" or better, shall have his service step adjusted in the following manner:

(1) Each officer and member in service step 1, 2, or 3 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 52 calendar weeks of active service in his service step;

(2) Each officer and member in service step 4 or 5 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 104 calendar weeks of active service in his service step;

(3) Each officer and member in service step 6, 7, or 8 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 156 calendar weeks of active service in his service step; and

(4) Each officer and member in salary classes 2 through 11 who has not attained the maximum service step rate of compensation for the rank or title in which he is placed shall be advanced in compensation successively to the next higher service step rate for such rank or title at the beginning of the 1st pay period immediately subsequent to the completion of 104 calendar weeks of active service in his service step, except that in the case of an officer or member in service step 4, 5, or 6 of salary class 2 or 3, service step 4 or 5 of salary class 4, and service step 4 of salary class 5, such officer or member shall be advanced successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 156 calendar weeks of active service in his service step.

(5) Each officer and member of the United States Park Police with a current performance rating of "satisfactory" or better, shall have a service step adjustment in the following manner:

(A) Each officer and member in service step 1, 2, or 3 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 52 calendar weeks of active service in the officer's or member's service step.

(B) Each officer and member in service step 4, 5, 6, 7, 8, or 9 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 104 calendar weeks of active service in the officer's or member's service step.

(C) Each officer and member in service step 10 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 156 calendar weeks of active service in the officer's or member's service step.

(D) Each officer and member in service steps 11, 12, or 13 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 208 calendar weeks of active service in the officer's or member's service step.

(b) As used in this part, the term "calendar week of active service" includes all periods of leave with pay, and periods of nonpay status which do not cumulatively equal 1 basic workweek.

(c) Notwithstanding any other law or regulation, employees appointed pursuant to § 1-610.72 shall receive compensation as a result of promotion or transfer in accordance with this section.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 303; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 104; Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89-810, title I, § 103; June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 104; Aug. 29, 1972, 86 Stat. 637, Pub. L. 92-410, title I, § 107; Oct. 4, 2000, D.C. Law 13-160, § 103(e), 47 DCR 4619; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 904(a); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(D).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-412. 1973 Ed., § 4-829.

Effect of amendments. — Pub. L. 111-282, in subsec. (a)(5), deleted "the United States Secret Service Uniformed Division and" following "member of".

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(112) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-543.04. Promotion or transfer.

(a) Except as otherwise provided in subsection (b) or (c) of this section, any officer or member who is promoted or transferred to a higher salary class shall receive basic compensation at the lowest scheduled rate of such higher salary class which exceeds his existing scheduled rate of basic compensation by not

less than 1 step increase of the next higher step of the salary class from which he is promoted or transferred.

(b) Any officer or member receiving additional compensation as provided in § 5-543.02 who is promoted or transferred to a higher salary class shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds his existing scheduled rate of basic compensation by at least the sum of 1 step increase of the next higher step of the salary class from which he is promoted or transferred and the amount of such additional compensation.

(c) Notwithstanding any other law or regulation, employees appointed pursuant to § 1-610.72 shall receive compensation as a result of promotion or transfer in accordance with this section.

(d)(1) Each officer and member of the United States Park Police who is promoted or transferred to a higher salary shall receive basic compensation in accordance with the officer's or member's total creditable service.

(2) For purposes of this subsection, an officer's or member's creditable service is any police service in pay status with the United States Secret Service Uniformed Division, United States Park Police, or Metropolitan Police Department.

(Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, title III, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(c); June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 105; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 108; Oct. 4, 2000, D.C. Law 13-160, § 103(f), 47 DCR 4619; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 904(b); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(E).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-561.01, 5-561.02, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-413. 1973 Ed., § 4-830.

Effect of amendments. — D.C. Law 13-160 added subsec. (c), relating to employees appointed pursuant to § 1-610.72.

Pub. L. 111-282, in subsec. (d)(1), deleted "the United States Secret Service Uniformed Division or" following "member of".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(f) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(f) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(f) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(f) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(f) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(f) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — For Law 13-160, see § 4-406.

§ 5-543.05. Demotion.

Whenever any officer or member of the Metropolitan Police force, including, notwithstanding any other law or regulation, any employee appointed pursu-

ant to § 1-610.72, the Fire Department of the District of Columbia, or the United States Park Police force is changed or demoted from any class to a lower class, the Mayor of the District of Columbia, or the Secretary of the Interior, as the case may be, may, in his discretion, in changing or demoting such officer or member, fix his rate of compensation at any rate provided for the class to which he is changed or demoted which does not exceed his existing rate of compensation, except that if his existing rate falls between 2 step rates provided in such lower class, he may receive the higher of such rates.

(Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, title III, § 305; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 109; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 4, 2000, D.C. Law § 13-160, § 103(g), 47 DCR 4619; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(F).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-414. 1973 Ed., § 4-831.

Effect of amendments. — D.C. Law 13-160, after “Whenever any officer or member of the Metropolitan Police force” added “including, notwithstanding any other law or regulation, any employee appointed pursuant to § 1-611.72”.

Pub. L. 111-282 deleted “the United States Secret Service Uniformed Division,” following “the Fire Department of the District of Columbia,” and deleted “or the Secretary of the Treasury,” following “Mayor of the District of Columbia.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(f) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(f) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102,

January 10, 2000, law notification 47 DCR 4339).

Legislative history of Law 13-160. — For Law 13-160, see § 4-541.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

PART D.

LONGEVITY.

§ 5-544.01. Service longevity.

(a)(1) In recognition of long and faithful continuous service, each officer and member in the active service on or after August 29, 1972, except for the Chief of Police and the Fire Chief, shall receive per annum, in addition to the rate of basic compensation prescribed in the salary schedule contained in § 5-541.01, an amount computed in accordance with the following table:

If an officer or member has completed at least:	He shall receive per annum an amount, fixed to the nearest dollar, equal to:
Fifteen years of continuous service.	Five per centum of the rate of basic compensation prescribed for service step 1 of the salary class of such salary schedule which he occupies.
Twenty years of continuous service.	Ten per centum of such compensation.
Twenty-five years of continuous service.	Fifteen per centum of such compensation.
Thirty years of continuous service.	Twenty per centum of such compensation.

(1A) Repealed.

(2) For purposes of paragraph (1) of this subsection, continuous service as an officer or member includes only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service:

- (A) Determined not to have been satisfactory service;
- (B) Rendered before appointment as an officer or member; or
- (C) Rendered after resignation as an officer or member.

(3)(A) Subject to the availability of federal or local appropriations, each officer and member of the Metropolitan Police Department appointed on or before February 15, 1980, shall receive additional compensation in accordance with paragraph (1) of this subsection only as long as he remains in the active service. The additional compensation shall be paid in the same manner as the basic compensation to which such officer or member is entitled and shall be subject to the same deductions as basic compensation, but shall not be considered as salary for the purpose of computing insurance coverage under the provisions of Chapter 87 of Title V of the United States Code. The additional compensation shall be included for purposes of retirement annuity calculations only for those officers and members who complete 20 years of active service prior to retirement. The District of Columbia and the Secretary of the Treasury are authorized to estimate the additional compensation for longevity for purposes of retirement annuity calculations for annuitants who retired on or after August 29, 1972, and on or before December 31, 2001. The District of Columbia and the Secretary of the Treasury are authorized to make payments based upon the use of such estimates. For the purpose of computing credit for service longevity in calculating retirement annuities pursuant to this subparagraph, active service includes any service that is creditable under § 5-704.

(B) Subject to the availability of federal or local appropriations, each officer and member of the Metropolitan Police Department appointed after February 15, 1980, shall receive additional compensation in accordance with paragraph (1) of this subsection only as long as he remains in the active service. The additional compensation shall be paid in the same manner as the basic compensation to which the officer or member is entitled and shall be subject to the same deduction as basic compensation, but shall not be considered as salary for the purpose of computing insurance coverage under the provisions of Chapter 87 of Title V of the United States Code. Such additional compensation shall be included for purposes of retirement annuity calculations only for those officers and members who complete 25 years of active service prior to retirement. The District of Columbia and the Secretary

of the Treasury are authorized to estimate the additional compensation for longevity for purposes of retirement annuity calculations for annuitants who retired on or after August 29, 1972, and on or before December 31, 2001. The District of Columbia and the Secretary of the Treasury are authorized to make payments based upon the use of such estimates. For the purpose of computing credit for service longevity in calculating retirement annuities pursuant to this subparagraph, active service includes any service that is creditable under § 5-704.

(B-1) Each member of the Fire Service shall receive additional compensation in accordance with paragraph (1) of this subsection only as long as the member remains in the active service. The additional compensation shall be paid in the same manner as the basic compensation to which the member is entitled and shall be subject to the same deductions as basic compensation. The service longevity payment shall be considered basic compensation for the purposes of retirement, calculation of survivor benefits and annuities under § 5-716, life insurance, and other forms of premium pay, for each member who retires on or after February 15, 1980. For the purpose of computing credit for service longevity in calculating retirement annuities pursuant to this subparagraph, active service includes any service that is creditable under § 5-704.

(B-2) For the purposes of retirement benefits based on the service longevity compensation provided for in this paragraph, the District government shall be liable financially only for District contributions to and payments from the District of Columbia Police Officers and Fire Fighters' Retirement Fund, established by § 1-712, for those benefits accrued or earned on or after July 1, 1997.

(C) Subject to the availability of federal or local appropriations, § 5-745(c) and (e) shall not apply to compensation for service longevity provided for in this paragraph.

(4) This subsection shall not apply to officers and members of the United States Secret Service Uniformed Division or the United States Park Police.

(b) Notwithstanding any other provision of this or any other law, individuals retired from active service prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, and who are entitled to receive a pension relief allowance or retirement compensation under subchapter I of Chapter 7 of this title, shall not be entitled to receive an increase in their pension relief allowance or retirement compensation by reason of the enactment of this section.

(c) Notwithstanding any other provision of this or any other law, each Deputy Chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of 30 years of continuous service on the police force or Fire Department, as the case may be, be placed in, and receive basic compensation at, the highest service step in the salary class to which his position is assigned in the salary schedule contained in § 5-541.01. For purposes of this subsection, in computing a Deputy Chief's continuous service on the police force or Fire Department, there shall be included only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service:

- (1) Determined not to have been satisfactory service;
- (2) Rendered before appointment as an officer or member; or
- (3) Rendered after resignation as an officer or member.

(d)(1) Notwithstanding any other law or regulation, employees appointed pursuant to § 1-610.72 shall be eligible for compensation in accordance with this section.

(2) Notwithstanding any other law or regulation, for employees appointed pursuant § 1-610.72, years of law enforcement experience shall constitute years of continuous service to the District of Columbia for purposes of this section.

(e) For employees transferred pursuant to § 5-409.01, any continuous prior service with the District of Columbia Fire and Emergency Medical Services Department shall constitute years of continuous service to the District of Columbia for the purposes of this section.

(Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, title IV, § 401; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(d); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88-575, title I, § 105; May 27, 1968, 82 Stat. 144, Pub. L. 90-320, § 3; June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 106; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 110; 1973 Ed., § 4-832; Sept. 3, 1974, 88 Stat. 1037, Pub. L. 93-407, title I, § 101(a)(8), (9); May 9, 2000, D.C. Law 13-101, § 2, 47 DCR 1354; Oct. 4, 2000, D.C. Law 13-160, § 103(h), 47 DCR 4619; Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 904(c); Oct. 3, 2001, D.C. Law 14-28, § 204, 48 DCR 6981; Oct. 19, 2002, D.C. Law 14-213, § 10, 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 37(b), 38(a), 51 DCR 881; Mar. 30, 2004, D.C. Law 15-125, § 2, 51 DCR 1545; Mar. 6, 2007, D.C. Law 16-223, § 202, 53 DCR 10221; May 13, 2008, D.C. Law 17-154, § 6(b), 55 DCR 3678; Feb. 24, 2012, D.C. Law 19-83, § 3, 58 DCR 11024.)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, 5-723.02, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-415. 1973 Ed., § 4-832.

Effect of amendments. — D.C. Law 13-101 rewrote par. (a)(3), which had read:

“Each officer and member shall receive additional compensation in accordance with paragraph (1) of this subsection only as long as he remains in the active service. Such compensation shall be paid in the same manner as the basic compensation to which such officer or member is entitled, except that it shall not be subject to deduction and withholding for retirement and insurance, and shall not be considered as salary for the purpose of computing annuities pursuant to §§ 4-607 to 4-630 and for the purpose of computing insurance coverage under the provisions of Chapter 87 of Title 5, United States Code.”

D.C. Law 13-160 added subsec. (d), relating to employees appointed pursuant to § 1-610.72.

D.C. Law 14-28 added subsec. (e).

D.C. Law 14-213, in subssecs. (a)(3)(A) and (a)(3)(B), added the last sentence.

D.C. Law 15-105, in subssecs. (a)(3) and (e), validated a previously made technical correction.

D.C. Law 15-125, in subsec. (a)(3)(A) and (B), inserted “For the purpose of computing credit for service longevity in calculating retirement annuities pursuant to this subparagraph, active service includes any service that is creditable under § 5-704.”

D.C. Law 16-223, in subsec. (a)(3)(A), substituted “February 15, 1980” for “January 1, 1980”, and reduced the length of service needed for additional compensation from 25 years to 20 years; in subsec. (a)(3)(B), substituted “February 15, 1980” for “January 1, 1980”; and added subssecs. (a)(3)(B-1) and (B-2).

D.C. Law 17-154, in subsec. (a), substituted “continuous service, except as provided in paragraph (1A) of this subsection,” for “service,” in the lead-in language, and added par. (1A).

D.C. Law 19-83, in subsec. (a)(1), substituted “In recognition of long and faithful continuous service, each officer and member in the active

service on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, except for the Chief of Police and the Fire Chief, shall receive per annum, in addition to the rate of basic compensation prescribed in the salary schedule contained in § 5-541.01, an amount computed in accordance with the following table:" for "In recognition of long and faithful continuous service, except as provided in paragraph (1A) of this subsection, each officer and member in the active service on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall receive per annum, in addition to the rate of basic compensation prescribed in the salary schedule contained in § 5-541.01, an amount computed in accordance with the following table:"; and repealed subsec. (a)(1A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(h) of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) amendment of section, see § 3(h) of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(h) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) amendment of section, see § 3(h) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) amendment of section, see § 3(h) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) amendment of section, see § 3(h) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

For temporary (90 day) amendment of section, see § 204 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 13-101. — Law 13-101, the "Police Recruiting and Retention Enhancement Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-328, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-247 and transmitted to both Houses of Congress for its review. D.C. Law 13-101 became effective on May 9, 2000.

Legislative history of Law 13-160. — For Law 13-160, see § 5-541.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

Legislative history of Law 14-213. — Law 14-213, the "Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 5-409.01.

Legislative history of Law 15-125. — Law 15-125, the "Police and Firemen's Service Longevity Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-64, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 28, 2004, it was assigned Act No. 15-312 and transmitted to both Houses of Congress for its review. D.C. Law 15-125 became effective on March 30, 2004.

Legislative history of Law 16-223. — For Law 16-223, see notes following § 5-105.09.

Legislative history of Law 17-154. — For Law 17-154, see notes following § 5-105.01.

Legislative history of Law 19-83. — Law 19-83, the "Executive Service Compensation Amendment Act of 2011", was introduced in Council and assigned Bill No. 19-44, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 16, 2011, it was assigned Act No. 19-243 and transmitted to both Houses of Congress for its review. D.C. Law 19-83 became effective on February 24, 2012.

References in text. — The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to in subsections (a)(1) and (b) of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

"Chapter 87 of Title V of the United States Code", referred to in subsection (a)(3), is codified at 5 U.S.C. § 8701 et seq.

PART E.

MISCELLANEOUS PROVISIONS.

§ 5-545.01. Basic compensation of officers and members of United States Park Police and United States Secret Service Uniformed Division.

(a) Except as provided in subsections (b) and (c) of this section, the rates of basic compensation of officers and members of the United States Park Police shall be the same as the rates of compensation, including longevity increases, provided in this subchapter, for officers and members of the Metropolitan Police force in corresponding or similar classes.

(b)(1) Effective at the beginning at the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under § 5305 of Title 5, United States Code, in the rates of pay under General Schedule, the annual rate of basic compensation of officers and members of the United States Park Police force shall be adjusted by the Secretary of the Interior, by an amount (rounded to the next highest multiple of \$5) equal to the percentage of such annual rate of pay which corresponds to the overall percentage (as set forth in the applicable report transmitted to the Congress under such § 5305) of the adjustment made in the rates of pay under the General Schedule.

(2) No adjustment in the annual rate of basic compensation of such officers and members may be made except in accordance with paragraph (1) of this subsection.

(3) Any reference in any law to the salary schedule in § 5-541.01 with respect to officers and members of the United States Park Police force shall be considered to be a reference to such schedule as adjusted in accordance with this subsection.

(4) This subsection shall not apply with respect to any pay period for which the salary schedule under subsection (c) applies to the United States Park Police.

(c)(1) The annual rates of basic compensation of officers and members of the United States Park Police, serving in classes corresponding or similar to those in the salary schedule in § 5-541.01 shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Service steps

Salary class and title	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14
Years in service	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1: Private	32,623	34,587	36,626	38,306	41,001	43,728	45,407	47,107	48,801	50,498	53,448	55,394	57,036	58,746
3: Detective		42,378	44,502	46,620	48,746	50,837	52,972	55,086	57,204	61,212	63,337	65,462	67,426	
4: Sergeant			46,151	48,446	50,746	53,056	55,372	57,691	59,999	63,558	65,867	68,176	70,221	
5: Lieutenant				50,910	53,462	56,545	59,120	61,688	64,258	68,197	70,744	73,290	75,489	
7: Captain					59,802	62,799	65,797	68,757	71,747	76,292	79,309	82,325	84,796	
8: Inspector					69,163	72,760	76,540	80,524	83,983	87,645	91,827	95,464	99,075	
9: Deputy Chief					79,768	85,158	90,578	95,980	99,968	103,957	107,945	111,933	115,291	
10: Assistant Chief														
11: Chief of the United States Secret Service Uniformed Division, United States Park Police														

(2) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5, United States Code (or any subsequent similar provision of law), in the rates of pay under the General Schedule (or any pay system that may supersede such schedule), the annual rates of basic compensation of officers and members of the United States Park Police shall be adjusted by the Secretary of the Interior, by an amount equal to the percentage of such annual rate of pay which corresponds to the overall percentage of the adjustment made in the rates of pay under the General Schedule, except that in no case may the annual rate of basic compensation for any such officer or member exceed the rate of basic pay payable for level IV of the Executive Schedule contained in subchapter II of chapter 53 of title 5, United States Code.

(3) Locality-based comparability payments authorized under section 5304 of title 5, United States Code, shall be applicable to the basic pay under this section, except locality-based comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the officer or member, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(4) Repealed.

(5) Any reference in any law to the salary schedule in § 5-541.01 with respect to officers and members of the United States Park Police shall be considered to be a reference to the salary schedule in paragraph (1) of this subsection as adjusted in accordance with this subsection.

(6)(A) Except as otherwise permitted by or under law, no allowance, differential, bonus, award, or other similar cash payment under this part or under Title 5, United States Code, may be paid to an officer or member of the United States Park Police in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such officer or member for service performed in such calendar year as an officer or member, such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

(B) This paragraph shall not apply to any payment under the following provisions of Title 5, United States Code:

- (i) Subchapter III or VII of chapter 55, or section 5596.
- (ii) Chapter 57 (other than section 5753, 5754, or 5755).
- (iii) Chapter 59 (other than section 5928).

(7)(A) Any amount which is not paid to an officer or member of the United States Park Police in a calendar year because of the limitation under paragraph (6) of this section shall be paid to such officer or member in a lump sum at the beginning of the following year.

(B) Any amount paid under this paragraph in a calendar year shall be taken into account for purposes of applying the limitations under paragraph (6) of this subsection with respect to such calendar year.

(8) The Office of Personnel Management shall prescribe regulations as may be necessary (consistent with section 5582 of title 5, United States Code) concerning how a lump-sum payment under paragraph (7) of this subsection

shall be made with respect to any employee who dies before an amount payable to such employee under paragraph (7) of this subsection is made.

(Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 501; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410, title I, § 111; Oct. 17, 1976, 90 Stat. 2493, Pub. L. 94-533, § 2; Oct. 7, 1980, 94 Stat. 1562, Pub. L. 96-396; Oct. 10, 1997, 111 Stat. 1285, Pub. L. 105-61, § 118(a); Nov. 19, 1997, 111 Stat. 2188, Pub. L. 105-100, § 159(a); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 §§ 902(a), (c), 903(a), (b); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(G).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, 5-545.06, 5-545.06a, 5-561.01, 5-561.02, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-416. 1973 Ed., § 4-833.

Effect of amendments. — Pub. L. 111-282, in subsec. (a), deleted “the United States Secret Service Uniformed Division” following “Police and”; in subsec. (c)(1), deleted “the United States Secret Service Uniformed Division and” following “members of”, and deleted “United States Secret Service Uniformed Division, preceding “United States Park Police”; in subsec. (c)(2), deleted “the annual rates of basic compensation of officers and members of the United States Secret Service Uniformed Division shall be adjusted by the Secretary of the Treasury,” following “schedule”; in subsec. (c)(5), deleted “officers and members of the United States Secret Service Uniformed Division or” following “respect to”; and, in subsecs. (c)(6)(A) and (7)(A), deleted “the United States Secret Service Uniformed Division or” following “member of”.

Effective date. — Section 118(f) of Pub. L. 105-61, 111 Stat. 1285, provided that the provisions of § 118 shall become effective on the first day of the first pay period beginning after the Dates of enactment of the act. Public Law 105-61 was approved on October 10, 1997.

Section 159(b) of Pub. L. 105-100, 111 Stat. 2188, the District of Columbia Appropriations Act, 1988, provided that the amendment made § 159(a) is effective on the Dates of enactment of Pub. L. 105-61. Public Law 105-61 was approved on October 10, 1997.

References in text. — “Subchapter III or VII of chapter 55,” referred to in (c)(6)(B)(i), are subchapters III and VII of chapter 55 of title 5, United States Code, codified at 5 U.S.C. § 5521 et seq., and 5 U.S.C. § 5561 et seq., respectively.

“Chapter 57,” referred to in (c)(6)(B)(ii), is chapter 57 of title 5, United States Code, codified at 5 U.S.C. § 5701 et seq.

“Chapter 59,” referred to in (c)(6)(B)(iii), is chapter 59 of title 5, United States Code, codified at 5 U.S.C. § 5901 et seq.

Editor’s notes. — Savings Provision: Section 118(d) of Pub. L. 106-61, 111 Stat. 1285, provided that on the effective date of § 118, any existing special salary rates authorized for members of the United States Secret Service Uniformed Division under § 5305 of title 5, United States Code (or any previous similar provision of law) and any special rates of pay or special pay adjustments under section 403, 404, or 405 of the Federal Law Enforcement Pay Reform Act of 1990 applicable to members of the United States Secret Service Uniformed Division shall be rendered inapplicable.

§ 5-545.02. [Reserved].

§ 5-545.03. Subchapter not construed to decrease compensation; exception as to vacancy.

Nothing contained in §§ 5-541.01 to 5-545.06 shall be construed to decrease the existing rate of compensation of any present officer or member, but when his position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay applicable to such position.

(Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 503.)

Section references. — This section is referred to in §§ 5-545.04, 5-545.05, 5-545.06, 5-545.06a, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-417. 1973 Ed., § 4-834.

§ 5-545.04. Council authorized to promulgate regulations.

The Council of the District of Columbia is hereby authorized to promulgate such regulations as it may deem necessary to carry out the intent and purposes of §§ 5-541.01 to 5-545.06.

(Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 504.)

Section references. — This section is referred to in §§ 5-545.03, 5-545.05, 5-545.06, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-418. 1973 Ed., § 4-835.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(114) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-545.05. Retroactive salary.

(a) Retroactive salary shall be paid by reason of §§ 5-541.01 to 5-545.06 only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on August 1, 1958, except that retroactive salary shall be paid:

(1) To an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the United States Secret Service Uniformed Division, who retired during the period beginning on the 1st day of the 1st pay period which began after January 1, 1958, and ending on August 1, 1958, for services rendered during such period; and

(2) In accordance with the provisions of §§ 5581 to 5583 of Title 5, United States Code, for services rendered during the period beginning on the 1st day of the 1st pay period which began after January 1, 1958, and ending on August 1, 1958, by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the federal government or the municipal government of the District of Columbia.

(Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 505; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.06, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-419. 1973 Ed., § 4-836.

§ 5-545.06. Delegation of powers and functions.

The Mayor of the District of Columbia and the Secretary of the Interior are hereby authorized to delegate, from time to time, to their designated agent or agents, any power or function vested in them by §§ 5-541.01 to 5-545.06, except those powers and functions vested in them by §§ 5-543.05 and 5-545.04.

(Aug. 1, 1958, 72 Stat. 486, Pub. L. 85-584, title V, § 506; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(2)(H).)

Section references. — This section is referred to in §§ 5-545.03, 5-545.04, 5-545.05, and 5-1304.

Prior Codifications. — 1981 Ed., § 4-420. 1973 Ed., § 4-837.

Effect of amendments. — Pub. L. 111-282 deleted “, the Secretary of the Treasury,” following “Columbia”.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-545.06a. Council authorized to change or suspend provisions.

(a) The Council of the District of Columbia is authorized to change or suspend by resolution the provisions of §§ 5-541.01, 5-542.01, 5-542.02, 5-542.03, 5-543.01, 5-543.02, 5-543.03, 5-543.04, 5-543.05, 5-544.01, 5-545.01, and 5-545.03 insofar as they relate to officers and members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department.

(b) The Council's authority to act pursuant to subsection (a) of this section shall be effective beginning on January 1, 1980.

(Aug. 1, 1958, 72 Stat. 486, Pub. L. 85-584, title V, § 506a, as added June 10, 1998, D.C. Law 12-124, § 201, 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 4-420.1.

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Comprehensive Merit Personnel Act Pay Limit Temporary Amendment Act of 1997 (D.C. Law 12-36, October 23, 1997, law notification 44 DCR 6554).

Emergency legislation. — For temporary addition of this section, see § 3 of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115,

July 18, 1997, 44 DCR 4501), § 3 of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and § 3 of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4466).

Legislative history of Law 12-124. — Law 12-124, the “Omnibus Personnel Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-44, which was

referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998 and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both Houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the

provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter IV. Conversion of New Salary Schedule.

§ 5-561.01. Conversion to new salary schedule, 1997. [Repealed].

Repealed.

(Oct. 10, 1997, 111 Stat. 1285, Pub. L. 105-61, § 118(b); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(3).)

Prior Codifications. — 1981 Ed., § 4-416.1.

Effective date. — Section 118(f) of Pub. L. 105-61, 111 Stat. 1285, provided that the provisions of § 118 shall become effective on the first day of the first pay period beginning after the Dates of enactment of the act. Public Law 105-61 was approved on October 10, 1997.

Editor's notes. — Savings Provision: Section 118(d) of Pub. L. 106-61, 111 Stat. 1285, provided that on the effective date of § 118, any

existing special salary rates authorized for members of the United States Secret Service Uniformed Division under § 5305 of title 5, United States Code (or any previous similar provision of law) and any special rates of pay or special pay adjustments under section 403, 404, or 405 of the Federal Law Enforcement Pay Reform Act of 1990 applicable to members of the United States Secret Service Uniformed Division shall be rendered inapplicable.

§ 5-561.02. Conversion to new salary schedule, 2000.

(a)(1) Effective on the first day of the 1st pay period beginning 6 months after December 21, 2000, the Secretary of the Interior shall fix the rates of basic pay for officers and members of the United States Park Police, in accordance with this subsection.

(2)(A) Each officer and member shall be placed in and receive basic compensation at the corresponding scheduled service step of the salary schedule under § 5-545.01(c) in accordance with the member's total years of creditable service, receiving credit for all service step adjustments. If the scheduled rate of pay for the step to which the officer or member would be assigned in accordance with this paragraph is lower than the officer's or member's salary immediately prior to the enactment of this paragraph, the officer or member will be placed in and receive compensation at the next higher service step.

(B) Each member whose position is to be converted to the salary schedule under § 5-545.01(b) and who, prior to the effective date of this section has earned, but has not been credited with, an increase in his or her rate of pay shall be afforded that increase before such member is placed in the corresponding service step in the salary schedule under § 5-545.01(b).

(C) For purposes of this paragraph, an officer's or member's creditable service is any police service in pay status with the United States Secret Service Uniformed Division, United States Park Police, or Metropolitan Police Department.

(b) Notwithstanding any other provision of law, if the total rate of compensation for an officer or employee for any pay period occurring after conversion to the salary schedule pursuant to subsection (a) of this section (determined by taking into account any locality-based comparability adjustments, longevity pay, and other adjustments paid in addition to the rate of basic compensation) is less than the officer's or employee's total rate of compensation (as so determined) on the date of enactment, the rate of compensation for the officer or employee for the pay period shall be equal to:

(1) The rate of compensation on December 21, 2000 (as so determined), increased by;

(2) A percentage equal to 50% of sum of the percentage adjustments made in the rate of basic compensation under § 5-545.01(c) for pay periods occurring after the date of enactment and prior to the pay period involved.

(c) The conversion of positions and individuals to appropriate classes of the salary schedule under § 5-545.01(c) and the initial adjustments of rates of basic pay of those positions and individuals in accordance with subsection (a) of this section shall not be considered to be transfers or promotions within the meaning of § 5-543.04.

(d) Each individual whose position is converted to the salary schedule under § 5-545.01(c) in accordance with subsection (a) of this section shall be granted credit for purposes of such individual's first service step adjustment under the salary schedule in § 5-545.01(c) for all satisfactory service performed by the individual since the individual's last increase in basic pay prior to the adjustment under § 5-545.01(c).

(e) The rates provided under the salary schedule under § 5-545.01(c) shall be increased by the percentage of any annual adjustment applicable to the General Schedule authorized under section 5303 of title 5, United States Code, which takes effect during the period which begins on December 21, 2000, and ends on the first day of the first pay period beginning 6 months after December 21, 2001.

(f) The conversion of positions and individuals to appropriate classes of the salary schedule under § 5-545.01(c) and the initial adjustments of rates of basic pay of those positions and individuals in accordance with subsection (a) of this section shall not be treated as an increase in salary for purposes of § 5-744 or § 5-745.

(Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 905; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(4).)

Effect of amendments. — Pub. L. 111-282, in subsec. (a)(1), deleted "the Secretary of the Treasury shall fix the rates of basic pay for

officers and members of the United States Secret Service Uniformed Division, and" following "2000,".

*Subchapter V. Federal Law Enforcement Pay Reform.***§ 5-563.01. Termination of existing special salary rates and adjustments.**

Beginning on December 21, 2000:

(1) No existing special salary rates shall be authorized for members of the United States Park Police under section 5305 of title 5, United States Code (or any previous similar provision of law); and

(2) No special rates of pay or special pay adjustments shall be applicable to members of the United States Park Police pursuant to section 405 of the Federal Law Enforcement Pay Reform Act of 1990.

(Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 905.)

§ 5-563.02. Freeze of current rate for locality-based comparability adjustments.

Notwithstanding any other provision of law, including the Law Enforcement Pay Equity Act of 2000 or any provision of law amended by the Law Enforcement Pay Equity Act of 2000, no officer or member of the United States Secret Service Uniformed Division or the United States Park Police may be paid locality pay under section 5304 or section 5304a of title 5, United States Code, at a percentage rate for the applicable locality in excess of the rate in effect for pay periods during calendar year 2000.

(Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, title IX, § 902(b).)

Editor's notes. — This section was enacted as part of the Law Enforcement Pay Equity Act of 2000 (Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, title IX, § 902(b)).

CHAPTER 6. POLICE AND FIREFIGHTERS MEDICAL CARE RECOVERY.

Sec.

5-601. Definitions.

5-602. Right of District to recover.

5-603. Enforcement of right.

5-604. Lien.

5-605. Promulgation of rules and regulations
by Mayor.

5-606. Compromise, release or waiver of claim.

Sec.

5-607. Effect of chapter on other rights of recovery.

5-608. Injuries or diseases received or contracted prior to enactment of chapter.

5-609. Appropriations authorized.

§ 5-601. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(2) The term "person" means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common-law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

(Aug. 17, 1978, D.C. Law 2-100, § 2, 25 DCR 288.)

Cross references. — Health care assistance, reimbursement, right of District, see § 4-609.

Prior Codifications. — 1981 Ed., § 4-501.
1973 Ed., § 4-1001.

Legislative history of Law 2-100. — Law 2-100, the "District of Columbia Medical Care Recovery Act of 1978," was introduced in Coun-

cil and assigned Bill No. 2-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978, and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-208 and transmitted to both Houses of Congress for its review.

§ 5-602. Right of District to recover.

Whenever the District of Columbia is authorized or required by law to: (1) Furnish or pay the expenses for hospital, medical, surgical, dental care and treatment (including prostheses and medical appliances) or the funeral expenses of an officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia (hereinafter, "policeman or fireman"); or (2) extend leave of absence with pay to a policeman or fireman who is injured or suffers a disease under circumstances creating a tort liability upon a 3rd person to pay damages therefor, whether or not received or contracted in the performance of duty, the District of Columbia shall have a right to recover from said 3rd person the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages paid or to be paid during the leave of absence resulting therefrom, and shall as to such right be subrogated to any right or claim which the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors has or have against such 3rd person to the extent of the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages based upon an authorized leave of absence paid or to be paid to such policeman or fireman. The Mayor may also

require the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the 3rd person to the District of Columbia to the extent of the District's right or claim.

(Aug. 17, 1978, D.C. Law 2-100, § 3, 25 DCR 288.)

Section references. — This section is referred to in §§ 5-604 and 5-606.

Prior Codifications. — 1981 Ed., § 4-502. 1973 Ed., § 4-1002.

Legislative history of Law 2-100. — For legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.

CASE NOTES

Payment and recovery.

District of Columbia, to the extent of its rights to legal subrogation under the Health-Care Assistance Reimbursement Act of 1984 (HCARA) and the Medical Care Recovery Act of 1978 (MCRA), could bring claims against gun manufacturers and distributors to recover nonreimbursed medical expenses incurred by

District for treatment of people injured from being shot by third parties. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

§ 5-603. Enforcement of right.

(a) To enforce such right, the District of Columbia may:

(1) Intervene or join in any action or proceeding brought by the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the 3rd person who is or may be liable in damages for the injury or disease; or

(2) If such action or proceeding is not commenced within 6 months after the 1st day in which care and treatment is furnished by the District of Columbia in connection with the injury or disease involved, institute and prosecute legal proceedings in a District of Columbia, state or federal court, either alone (in its name or in the name of the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors against the 3rd person who is liable for the injury or disease.

(b) Any employee of the District of Columbia who is required to appear as a party or witness in the prosecution of said action or proceeding is, when directed to participate in the preparation for trial or the trial thereof and while so engaged, in an active duty status.

(Aug. 17, 1978, D.C. Law 2-100, § 4, 25 DCR 288.)

Section references. — This section is referred to in § 5-606.

Prior Codifications. — 1981 Ed., § 4-503. 1973 Ed., § 4-1003.

Legislative history of Law 2-100. — For legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.

§ 5-604. Lien.

(a) The District of Columbia shall have a lien, to the amount of the reasonable value of the care and treatment, funeral expenses, and wage payments described in § 5-602, upon any recovery of sum received or collected or to be collected by an injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors in a claim or action asserted or maintained by such policeman or fireman or his personal representative against a liable 3rd person for damages.

(b)(1) No such lien described above shall be effective, however:

(A) Unless, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease, the District of Columbia shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written notice containing the name and address of the injured or diseased policeman or fireman, the date and approximate place of the accident or incident giving rise thereto and the name of the person alleged to be liable to the policeman or fireman for the injuries or disease received; or

(B) Unless the District of Columbia shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person alleged to be liable to the policeman or fireman for the injuries or disease received, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease.

(2) Where the name of an insurance carrier for the 3rd party tort-feasor is ascertained, the District of Columbia shall also mail a copy of such notice to such insurance carrier. Notice of the filing of the lien shall also be given to the injured or diseased policeman or fireman, or to his attorney or personal representative.

(c) Any person, including an insurance carrier, who, after the mailing of such notice, shall make any payment to such policeman or fireman or to his attorney or personal representative as compensation for the injury sustained or disease contracted without paying to the District of Columbia the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of 1 year from the date of payment to such policeman or fireman, his attorney, or personal representative, as aforesaid, be and remain liable to said District of Columbia for the amount which the District was entitled to receive under its lien, and the District of Columbia may, within such period, enforce its lien by an action against the person making any such payment.

(d) When a policeman or fireman, or his attorney or personal representative, receives, as a result of an action or proceeding brought by the policeman or fireman, or on his behalf or a result of a settlement made by him or on his behalf, any moneys or other property in satisfaction of the liability of a 3rd person for the injury sustained or disease contracted, such policeman or

fireman, or his attorney or personal representative, as the case may be, shall ascertain and pay to the District of Columbia the amount of its lien or so much thereof as can be realized out of any such recovery or settlement. Notwithstanding any other provision of law, whenever a policeman or fireman, or his attorney or personal representative, receives any payment as described in the preceding sentence and fails to pay to the District of Columbia the amount of its lien, the District of Columbia is authorized to take appropriate action to recover from such policeman or fireman or his attorney or personal representative the amount of its lien, including, but not limited to, the right to counterclaim, setoff, or attach moneys or other property otherwise due and payable from the District of Columbia to said policeman or fireman, his guardian, personal representative, estate, dependents or survivors.

(Aug. 17, 1978, D.C. Law 2-100, § 5, 25 DCR 288.)

Section references. — This section is referred to in § 5-606.

Prior Codifications. — 1981 Ed., § 4-504.
1973 Ed., § 4-1004.

Legislative history of Law 2-100. — For legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.

§ 5-605. Promulgation of rules and regulations by Mayor.

The Mayor is authorized to promulgate rules and regulations to carry out the purposes of this chapter, including, but not limited to, regulations:

(1) With respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished, or paid or to be paid; and

(2) To provide procedures for distributing the proceeds from recoveries and settlements obtained by either the injured or diseased policeman or fireman or the District of Columbia; provided, that in any event said policeman or fireman, or his guardian, personal representative, estate, dependents, or survivors shall have the right to retain not less than one-fifth of the net amount of any money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the lien of the District of Columbia.

(Aug. 17, 1978, D.C. Law 2-100, § 6, 25 DCR 288.)

Section references. — This section is referred to in § 5-606.

Prior Codifications. — 1981 Ed., § 4-505.
1973 Ed., § 4-1005.

Legislative history of Law 2-100. — For

legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.

Delegation of Authority. — Delegation of authority pursuant to Law 2-100, see Mayor's Order 86-63, April 22, 1986.

§ 5-606. Compromise, release or waiver of claim.

To the extent prescribed by regulations under § 5-605, the Mayor may:

(1) Compromise or settle and execute a release of any claim which the

District of Columbia has by virtue of the rights established by § 5-602, § 5-603, or § 5-604; or

(2) For the convenience of the District of Columbia, or if the Mayor determines that collection would result in undue hardship upon the policeman or fireman who suffered the injury or disease resulting in care and treatment described in § 5-602, or upon his dependents or survivors, waive any such claim in whole or in part.

(Aug. 17, 1978, D.C. Law 2-100, § 7, 25 DCR 288.)

Prior Codifications. — 1981 Ed., § 4-506. legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.
1973 Ed., § 4-1006.
Legislative history of Law 2-100. — For

§ 5-607. Effect of chapter on other rights of recovery.

No action taken by the District of Columbia in connection with the rights afforded under this chapter shall operate to deny to the injured or diseased policeman or fireman recovery for any damages or portion thereof not covered by this chapter.

(Aug. 17, 1978, D.C. Law 2-100, § 8, 25 DCR 288.)

Prior Codifications. — 1981 Ed., § 4-507. legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.
1973 Ed., § 4-1007.
Legislative history of Law 2-100. — For

§ 5-608. Injuries or diseases received or contracted prior to enactment of chapter.

Nothing in this chapter shall be deemed to apply to any hospital, medical, surgical, or dental care or treatment or wage payments based upon an authorized leave of absence which a policeman or fireman is receiving or is entitled to receive from the District of Columbia for an injury received or disease contracted prior to enactment of this chapter.

(Aug. 17, 1978, D.C. Law 2-100, § 9, 25 DCR 288.)

Prior Codifications. — 1981 Ed., § 4-508. legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.
1973 Ed., § 4-1008.
Legislative history of Law 2-100. — For

§ 5-609. Appropriations authorized.

Appropriations to carry out the purposes of this chapter, including funds for the advancement of costs and expenses for the enforcement of recoveries, are hereby authorized.

(Aug. 17, 1978, D.C. Law 2-100, § 10, 25 DCR 288.)

Prior Codifications. — 1981 Ed., § 4-509. legislative history of D.C. Law 2-100, see Historical and Statutory Notes following § 5-601.
1973 Ed., § 4-1009.
Legislative history of Law 2-100. — For

CHAPTER 6A. POLICE AND FIREFIGHTERS LIMITED DUTY.

Sec.

5-631. Definitions.

5-632. Limited duty.

5-633. Medical leave for performance of duty injuries and illnesses; referral for disability retirement.

Sec.

5-634. Medical leave for non-performance-of-duty illnesses and injuries; referral for disability retirement.

5-635. Rules.

§ 5-631. Definitions.

For the purposes of this chapter, the term:

- (1) "Act" means subchapter I of Chapter 7 of Title 5 [§ 5-701 et seq.].
- (2) "Chief" means either the Chief of the Metropolitan Police Department or the Chief of the Fire and Emergency Medical Services Department.
- (3) "Department" means the Metropolitan Police Department or the Fire and Emergency Medical Services Department.
- (4) "Director" means either the director of medical services for the Metropolitan Police Department, or the medical services officer for the Fire and Emergency Medical Services Department.
- (5) "Full range of duties" means the ability of a member to perform all of the essential functions of police work or fire suppression as determined by the established policies and procedures of the Metropolitan Police Department or the Fire and Emergency Medical Services Department, and to meet the physical examination and physical agility standards established under §§ 5-107.02a and 5-451.
- (6) "Limited duty" means a temporary status for members who, because of injury or other temporary medical disability, are not able to perform the full range of duties, but are certified by a Police and Fire Clinic physician as being capable of effectively performing certain types of work within the department.
- (7) "Member" means a sworn employee of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

(Sept. 30, 2004, D.C. Law 15-194, § 621, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Editor's notes. — Section 641 of D.C. Law 15-194 provided

"Sec. 641. Applicability subject to availability of appropriations.

"This title referring to Chapter 6A shall be subject to the availability of appropriations."

Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided:

"Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress."

§ 5-632. Limited duty.

(a) If the Director, in consultation with Police and Fire Clinic physicians, determines that a member, because of injury or other temporary medical disability is unable to perform the full range of duties, but is capable of effectively performing certain types of work within the department, and the prognosis is that the member will be able to perform a full range of duties after

achieving maximum medical improvement, the Director may recommend to the Chief that the member perform work in a limited-duty status.

(b) Members in a limited-duty status shall:

(1) Undertake in-service training as required by the Chief;

(2) Not be permitted to work voluntary overtime; and

(3) Not accept or continue any off-duty employment without the specific approval of the Chief.

(c) No less than every 30 days, the Director shall evaluate members in a limited-duty status to determine their health status and to ensure that they are complying with their medical treatment plans.

(d) If at any time the Director, in consultation with the Police and Fire Clinic physicians, determines that a member in a limited-duty status is unable to perform the full range of duties after achieving maximum medical improvement, the Director shall recommend the member for retirement pursuant to § 5-709 or § 5-710, as appropriate.

(Sept. 30, 2004, D.C. Law 15-194, § 622, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-633. Medical leave for performance of duty injuries and illnesses; referral for disability retirement.

(a) Except as provided in subsections (e) and (g) of this section, if the Director, in consultation with the Police and Fire Clinic physicians, determines that a member can neither perform the full range of duties nor work in a limited-duty status due to a performance-of-duty injury or illness, the member shall be entitled to non-chargeable medical leave and shall receive administrative pay for a period of not more than 2 years in accordance with rules established by the Mayor.

(b) Except as provided in subsection (g) of this section, if at any time the Director, in consultation with the Police and Fire Clinic physicians, determines that a member who has sustained a performance-of-duty injury or illness will not be able to perform the full range of duties after achieving maximum medical improvement, the Director shall recommend the member for retirement pursuant to § 5-710.

(c) Except as provided in subsections (e) and (f) of this section, and regardless of whether the prognosis is that the member will be able to perform the full range of duties after achieving maximum medical improvement, the Director shall process for retirement pursuant to § 5-710, those members of the Metropolitan Police Department who spend all or part of 172 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one performance-of-duty injury or illness, including any complications relating to the injury or illness.

(d) Except as provided in subsections (e), (f) and (g) of this section, and regardless of whether the prognosis is that the member will be able to perform

the full range of duties after achieving maximum medical improvement, the Director shall process for retirement pursuant to § 5-710, those Fire and Emergency Medical Services members who spend 64 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one performance-of-duty injury or illness, including any complications relating to the injury or illness.

(e) If a member has sustained a serious or life-threatening injury or illness in the performance of duty that may require more than 2 years of medical treatment for the member to achieve maximum medical improvement, and the prognosis is that the member eventually will be able to perform the full range of duties, the Director, in consultation with Police and Fire Clinic physicians, may recommend to the Chief that the member be provided with additional non-chargeable medical leave and disability compensation pay until the member achieves maximum medical improvement.

(f) The provisions of subsections (c) and (d) of this section shall not apply to members who are unable to perform the full range of duties as a result of pregnancy.

(g)(1) If a member of the Fire and Emergency Medical Services Department has sustained, in the performance of duty at the scene of a fire or emergency, any serious or life-threatening injury or illness for which the member requires critical care treatment in a hospital intensive care unit or its equivalent, the member shall not be processed for retirement pursuant to subsection (b) or subsection (d) of this section unless the member:

(A) As a result of the injury or illness sustained, has spent more than 170 cumulative work days in a less-than-full-duty status over the 2-year period following the date the member sustained the injury or illness; and

(B) Is unable to work in a less-than-full-duty capacity within the Department.

(2) The member shall be provided with additional non-chargeable medical leave and disability compensation pay pursuant to subsection (a) of this section until the member achieves maximum medical improvement or is processed for retirement after having spent more than 170 cumulative work days in less-than-full-duty status over the 2-year period.

(3)(A) A member who has spent more than 170 cumulative work days in less-than-full-duty status over the 2-year period pursuant to paragraph (1) of this subsection and continues to be unable to perform the full range of duties shall not be processed involuntarily for retirement under § 5-710 if the member is able and willing to work in any less-than-full-duty capacity within the Department, including staffing the divisions of the Training Academy, Professional Standards, Fleet Management, Facilities Maintenance, Fire Prevention and Education, and equipment maintenance, or other non-firefighting duty.

(B) The Department shall assign the member non-firefighting duties if the member continues to be unable to perform the full range of duties but is able and willing to work in a less-than-full-duty capacity after expiration of the 170 days.

(C) Nothing in this paragraph shall be construed as preventing the member from seeking retirement for disability under § 5-710.

(Sept. 30, 2004, D.C. Law 15-194, § 623, 51 DCR 9406; Oct. 21, 2008, D.C. Law 17-235, § 2, 55 DCR 9016.)

Effect of amendments. — D.C. Law 17-235, in subsec. (a), substituted “subsections (e) and (g)” for “subsection (e)”; in subsec. (b), inserted “Except as provided in subsection (g) of this section,”; and added subsec. (g).

Temporary Amendment of Section. — Section 2 of D.C. Law 17-143, in subsec. (d), substituted “subsections (e), (f), and (g)” for “subsections (e) and (f)”, and added subsec. (g) to read as follows: “(g) If a member of the Fire and Emergency Medical Services Department has sustained, in the performance of duty at the scene of a fire, 2nd- or 3rd-degree burns over 15% or more of the member’s body for which the member requires critical care treatment in a hospital intensive care unit or its equivalent, the member shall not be processed for retirement pursuant to subsection (d) of this section unless the member, as a result of the burns sustained, has spent more than 170 cumulative work days in a less-than-full-duty status over the 2-year period following the date the member sustained the burns.”

Section 4(b) of D.C. Law 17-143 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Burned Fire Fighter Relief Emergency Amendment Act of 2008 (D.C. Act 17-243, January 23, 2008, 55 DCR 1226).

For temporary (90 day) amendment of section, see § 2 of Burned Fire Fighter Relief Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-347, April 14, 2008, 55 DCR 5200).

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 17-235. — Law 17-235, the “Injured Fire Fighter Relief Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-676 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on July 28, 2008, it was assigned Act No. 17-476 and transmitted to both Houses of Congress for its review. D.C. Law 17-235 became effective on October 21, 2008.

§ 5-634. Medical leave for non-performance-of-duty illnesses and injuries; referral for disability retirement.

(a) If the Director, in consultation with the Police and Fire Clinic physicians, determines that a member can neither perform the full range of duties nor work in a limited-duty status due to a non-performance-of-duty injury or illness, the member shall be entitled to chargeable medical leave to the extent the member has leave in his or her sick leave and annual leave accounts, and in accordance with rules established by the Mayor under Chapter 6 of Title 1 and Chapter 5 of Title 32.

(b) If at any time the Director, in consultation with the Police and Fire Clinic physicians, determines that a member who has sustained a non-performance-of-duty injury or illness will not be able to perform the full range of duties after achieving maximum medical improvement, the Director shall recommend the member for retirement pursuant to § 5-709.

(c) Except as provided in subsection (e) of this section, and regardless of whether the prognosis is that the member who has sustained a non-performance-of-duty injury or illness will be able to perform a full range of duties after achieving maximum medical improvement, the Director shall process for retirement pursuant to § 5-709, those Metropolitan Police Department members who spend all or part of 172 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one non-performance-of-duty injury or illness, including any complications relating to the injury or illness.

(d) Except as provided in subsection (e) of this section, and regardless of whether the prognosis is that the member who has sustained a non-performance-of-duty injury or illness will be able to perform the full range of duties after achieving maximum medical improvement, the Director shall process for retirement pursuant to § 5-709, those Fire and Emergency Medical Services members who spend 64 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one non-performance-of-duty injury or illness, including any complications relating to the injury or illness.

(e) The provisions of subsections (c) and (d) of this section shall not apply to members who are unable to perform a full range of duties as a result of pregnancy.

(Sept. 30, 2004, D.C. Law 15-194, § 624, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-635. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Sept. 30, 2004, D.C. Law 15-194, § 625, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

CHAPTER 7. POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY.

Subchapter I. Retirement and Disability, 1916 Sec.

Sec.

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Subchapter I. Retirement and Disability, 1916.

§ 5-701. Definitions.

Wherever used in this subchapter:

(A) The term "member" means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the United States Secret Service Uniformed Division, and any officer or member of the United States Secret Service Division to whom this subchapter shall apply, but does not include an officer or member of the United States Park Police force, of the United States Secret Service Uniformed Division, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security

Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of § 8402 of such title.

(A) The term “member” means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the United States Secret Service Uniformed Division, and any officer or member of the United States Secret Service Division to whom this subchapter shall apply, but does not include an officer or member of the United States Park Police force, of the United States Secret Service Uniformed Division, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of § 8402 of such title.

(B) [Not funded]

(3) The term “widow” means the surviving wife of a member or former member if:

(A) She was married to such member or former member:

(i) While he was a member; or

(ii) For at least 1 year immediately preceding his death; or

(B) She is the mother of issue by such marriage.

(4) The term “widower” means the surviving husband of a member or former member if, in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the surviving husband of a member or former member who was a member or officer of the Metropolitan Police force or the Fire Department of the District of Columbia if:

(A) He was married to such member or former member:

(i) While she was a member; or

(ii) For at least 1 year immediately preceding her death; or

(B) He is the father of issue by such marriage.

(5)(A) The term “child” means an unmarried child, including:

(i) An adopted child; and

(ii) A stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of 18 years; or

(iii) Such unmarried child regardless of age who, because of physical or mental disability incurred before the age of 18, is incapable of self-support.

(B) The term “student child” means an unmarried child who is a student between the ages of 18 and 22 years, inclusive, and who is regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(6) The term “basic salary” means regular salary established by law or regulation, including any differential for special occupational assignment, but shall not include overtime, holiday, or military pay.

(7) The term “annuitant” means any former member who, on the basis of his service, has met all requirements of this subchapter for title to annuity and has filed claim therefor.

(8) The term “survivor” means a person who is entitled to annuity under this subchapter based on the service of a deceased member or of a deceased annuitant.

(9) The term “survivor annuitant” means a survivor who has filed claim for annuity.

(10) The term “police or fire service” means all honorable service in the Metropolitan Police Department, United States Secret Service Uniformed Division, Fire Department of the District of Columbia, the United States Park Police force, and the United States Secret Service Division coming under the provisions of this subchapter.

(11) The term “military service” means honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, but shall not include service in the National Guard except when ordered to active duty in the service of the United States.

(12) The term “Mayor” means the Mayor of the District of Columbia or his designated agent or agents.

(13) The term “service” means employment which is creditable under § 5-704.

(14) The term “government” means the executive, judicial, and legislative branches of the United States government, including government owned or controlled corporations and Gallaudet College, and the municipal government of the District of Columbia.

(15) The term “government service” means honorable active service in the executive, judicial, or legislative branches of the United States government, including government owned or controlled corporations, and Gallaudet College, and the municipal government of the District of Columbia, and for which retirement deductions, other than social security deductions, were made.

(16) The term “department” means any part of the executive branch of the United States government, or any part of the government of the District of Columbia whose members come under this subchapter.

(17) The term “average pay” means the highest annual rate resulting from averaging the member’s rates of basic salary in effect over any 36 consecutive months of police or fire service in the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, or over any 12 consecutive months of police or fire service in the case of any other member, with each rate weighted by the time it was in effect, except that if the member retires under § 5-710 and if on the date of his retirement under the section he has not completed 12 consecutive months or 36 consecutive months, as the case may be, of police or fire service, such term means his basic salary at the time of his retirement.

(18) The term “adjusted average pay” means the average pay of a member who was an officer or member of the United States Secret Service Uniformed Division, the United States Secret Service Division, the Metropolitan Police force or the Fire Department of the District of Columbia increased by the per centum increase (adjusted to the nearest one tenth of 1%) in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor

Statistics, between the month in which such member retires and the month immediately prior to the month in which such member dies; except that in the case of members hired on or after the first day of the first pay period that begins after October 29, 1996, the increase shall not exceed 3% per annum.

(19) The term "full range of duties" means the ability of a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department to perform all of the essential functions of police work or fire suppression as determined by the established policies and procedures of the Metropolitan Police Department or the Fire and Emergency Medical Services Department and to meet the physical examination and physical agility standards established under §§ 5-107.02a and 5-451.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(a); as added Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, §§ 1(1), (2); Dec. 7, 1970, 84 Stat. 1392, Pub. L. 91-532, § 1(a); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(1); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(a), (d)(1); Oct. 1, 1976, D.C. Law 1-87, § 8(a), 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 96-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 201, 206(a)(2); Jan. 8, 1988, 101 Stat. 1745, Pub. L. 100-238, § 103(d); Feb. 5, 1994, D.C. Law 10-68, § 13, 40 DCR 6311; Nov. 19, 1995, 109 Stat. 504, Pub. L. 104-52, § 630(a); Apr. 9, 1997, D.C. Law 11-218, § 2(a), 43 DCR 6172; Sept. 30, 2004, D.C. Law 15-194, § 602(a), 51 DCR 9406; Mar. 2, 2007, D.C. Law 16-191, § 26, 53 DCR 6794; Mar. 31, 2009, D.C. Law 17-356, § 3(a), 56 DCR 1614)

Cross references. — District of Columbia employees retirement program management, "participant" defined, see § 1-702.

District of Columbia employees retirement program management, "retirement program" defined, see § 1-702.

District of Columbia police officers and firefighters retirement fund, see § 1-712.

Employee retirement program management, annual report, see § 1-732.

Merit system, "annuitant" defined, see § 1-621.03.

Merit system, "annuitant defined", see § 1-622.04.

Merit system, "employee" defined, see § 1-623.01.

Office of emergency preparedness, appointment of police or fire department members, see § 7-2203.

Police, fire fighters, and teachers retirement benefit placement plan, "Police and Firemen's Retirement Act" defined, see § 1-901.02.

Police, transfer from Metropolitan to Capitol Police, creditable service as Congressional employee, annuity rights, forfeiture, see § 10-505.03.

Police, transfer from Metropolitan to Capitol police, payments into Retirement and Disability Fund, see § 10-505.04.

"Retirement program" defined, see § 1-702.

Spouse equity, application of law, see § 1-529.01.

Spouse equity, "employee" defined, see § 1-529.02.

Unemployment compensation, see § 51-101 et seq.

Section references. — This section is referred to in §§ 1-632.03, 5-414, 5-544.01, 5-702, 5-704, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, 7-2203, 10-505.03, and 10-505.04.

Prior Codifications. — 1981 Ed., § 4-607. 1973 Ed., § 4-521.

Effect of amendments. — D.C. Law 15-194 added par. (19).

D.C. Law 16-191, in par. (19), validated a previously made technical correction.

D.C. Law 17-356, in par. (1), designated subpar. (A) and added subpar. (B).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 2(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language

Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-316. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Legislative history of Law 17-356. — For Law 17-356, see notes following § 5-701.

References in text. — Title II of the Social Security Act, referred to in subdivision (1) of this section, is codified as 42 U.S.C. §§ 401 to 433.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subdivision (1) of this section, is codified as 26 U.S.C. § 3101 et seq.

"Chapter 84 of title 5, United States Code," referred to in subdivision (1) of this section, is codified as 5 U.S.C. § 8401 et seq.

"This act," referred to at the end of paragraph (10) of this section, means the Act of September 1, 1916, ch. 433.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: "Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress."

Section 4 of D.C. Law 17-356 provided that this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-356 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-356, are not in effect.

Law 17-358 amended this section subject to congressional enactment.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Burden of proof.

Child.

In general.

Medical testimony.

Performance of duties.

Psychological injuries.

Review.

Rulemaking authority.

Burden of proof.

Once an officer makes a prima facie case under Police and Firefighters Retirement and Disability Act, the employer bears the burden of disproving the inference that the officer's

injury was caused by an on-duty injury. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

Child.

Paternity determination for firefighter's putative child was outside special competence of Police and Firefighters' Retirement and Relief Board in connection with application for survivor benefits, and, thus, primary jurisdiction doctrine did not require court to defer exercising jurisdiction in action for declaratory judgment on parentage; although the Board generally had the authority to make findings of fact, the governing statute did not specifically recognize or confer any specialized competency upon the Board regarding paternity, the competing facts the Board identified strongly suggested the possibility of fraud in acknowledgment of paternity, Board referred paternity question to court, and resolution of paternity by administrative body raised possibility of different determinations of parentage in different fora. *Matthews v. District of Columbia*, 875 A.2d 650, 2005 D.C. App. LEXIS 265 (2005).

In general.

District of Columbia Police and Firefighters Retirement and Disability Act (PFRDA) provided exclusive remedy for off-duty police officer who alleged that he was injured by another officer's use of excessive force, even though off-duty officer alleged intentional torts, and the psychological injury he alleged did not meet criteria for compensation under PFRDA, and thus, District was not liable to officer for police brutality, assault and battery, and intentional infliction of emotional distress. *Johnson v. District of Columbia*, 445 F.Supp.2d 1, 2006 U.S. Dist. LEXIS 55442 (2006), affirmed in part and reversed in part by, remanded by 528 F.3d 969, 381 U.S. App. D.C. 351, 2008 U.S. App. LEXIS 13289 (2008).

Medical testimony.

Police and Firefighters' Retirement and Relief Board failed to provide a persuasive reason for relying on the minority opinion of one general physician, who opined that police officer was incapacitated from further duty by reason of her asthma, over those of six physicians, at least four of whom were specialists in asthma and immunology and one who was an internationally-recognized expert on the condition, who all opined that officer was not incapacitated from duty, and thus the Board's decision was not based on substantial evidence and remand was required. *Sandula v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 979 A.2d 32, 2009 D.C. App. LEXIS 371 (2009).

Performance of duties.

Injuries suffered by police officer while defending himself against an armed aggressor

while off duty in Maryland were not incurred in performance of officer's duties as a Metropolitan Police Department (MPD) officer, and thus officer was not entitled to compensation under Police and Firefighter's Retirement and Disability Act, even though officer asserted that he was sworn in as a United States Marshal in a cross-jurisdictional program with county in Maryland where incident occurred and that he was deputized to assist that county's police department. *Smallwood v. D.C. Metro. Police Dep't*, 956 A.2d 705, 2008 D.C. App. LEXIS 396 (2008).

Psychological injuries.

Officer, who initiated stop of a driver fatally shot following physical altercation with another responding police officer, was not entitled to recover on claim for administrative sick leave under Police and Firefighters Retirement and Disability Act due to psychological injury/illness diagnosed as acute stress disorder, or post-traumatic stress disorder (PTSD), where officer's involvement in the shooting was not beyond the stresses police officers face on a daily basis; although officer regretted initiating a stop that put another police officer's life in danger, officer did not actually see the struggle or shooting occur, officer suffered no physical injury, and officer had no history of a prior psychological illness. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

Review.

Review of the construction by Police and Firefighters' Retirement and Relief Board (PFRRB) of the Police and Firefighters' Retirement and Disability Act (PFRDA) is de novo, for the Court of Appeals is the final authority on issues of statutory construction and the ultimate interpreter of the statutory provisions from which the PFRRB, as a creature of the legislature, derives its powers. *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 2012 D.C. App. LEXIS 304 (2012).

If a claimant makes a prima facie case under Police and Firefighters Retirement and Disability Act, appellate court reviews the record to determine whether the District met its burden to produce substantial evidence tending to disprove the inference that the disability resulted from the on-duty injury. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

Rulemaking authority.

Question of whether Police and Firefighters Retirement and Relief Board could engage in adjudicative rule-making and adopt a claim-filing deadline, in proceeding on petition by daughter of retired police officer for a survivor's annuity due to low mental capacity, was for the Court of Appeals rather than the Board, in

daughter's appeal of Board order denying her petition as untimely, as the resolution of the question turned on the applicability of the District of Columbia Administrative Procedure Act (DCAPA), task did not fall within the spe-

cial expertise of the Board, and instead the task was one that the Court could address in the first instance. *Andrews v. D.C. Police & Firefighters Ret. & Relief Bd.*, 991 A.2d 763, 2010 D.C. App. LEXIS 135 (2010).

§ 5-702. Application of amendments to §§ 5-701 and 5-716.

The amendments made by Pub. L. 96-122, § 206(a), to §§ 5-701 and 5-716 shall apply with respect to survivor annuities under this subchapter for survivors of officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia which commence on or after the 1st day of the 1st month which begins after the end of the 90-day period beginning on November 17, 1979.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 206(b).)

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-608. 1973 Ed., § 4-521.1.

§ 5-703. United States Secret Service Division; transfer of civil service funds; credit for prior service with other police forces.

Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for 10 years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund continued by §§ 8331(5) and 8348 of Title 5, United States Code, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under this subchapter, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the United States Secret Service Uniformed Division and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the United States Secret Service Uniformed Division toward the required 10 years or more service.

(Sept. 1, 1916, ch. 433, § 12(b); Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-476, § 1; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-609. 1973 Ed., § 4-522.

Editor's notes. — Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157

provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

CASE NOTES

In general.

Even if United States Secret Service (USSS) employees' case relating to their noncoverage under District of Columbia Police and Firefighters Retirement and Disability Act (DCRA) was more than an Administrative Procedure Act (APA) claim, their claims were precluded by sovereign immunity, which neither APA nor DCRA waived. *Eisenbeiser v. Chertoff*, 448 F.Supp.2d 106, 2006 U.S. Dist. LEXIS 59942 (2006).

United States Secret Service (USSS) employ-

ees who alleged they had been erroneously placed within Federal Employees' Retirement System (FERS) and were entitled to elect more favorable coverage under District of Columbia Police and Firefighters Retirement and Disability Act (DCRA) had no remedy under Administrative Procedure Act (APA), as another remedy was available, the alternate remedy was exclusive, and there was no "final agency action" under APA. *Eisenbeiser v. Chertoff*, 448 F.Supp.2d 106, 2006 U.S. Dist. LEXIS 59942 (2006).

§ 5-704. Creditable service.

(a) A member's service for the purposes of this subchapter shall mean all police or fire service and such military and government service as is authorized by such sections prior to the date of separation upon which title to annuity is based.

(b)(1) Each member shall be allowed credit for periods of military service served prior to the date of the separation upon which the annuity is based; however, if a member is awarded retired pay on account of military service, such military service shall not be included, unless such retired pay is awarded on account of a service-connected disability:

(A) Incurred in combat with an enemy of the United States; or

(B) Caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part I, paragraph I, or is awarded under §§ 101, 676, 1001, 1332 to 1337, 1401, 3966, 6017, 6034, 6323, and 8966 of Title 10, United States Code.

(2) Nothing in this subchapter shall affect the rights of members to retired pay, pension, or compensation in addition to the annuity herein provided.

(c) Credit shall be allowed for leaves of absence granted a member while performing military service, excluding from credit so much of any other leaves of absence without pay as may exceed 6 months in the aggregate in any calendar year.

(d) A member who, during any war or national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of this subchapter, as separated from his position by reason of such military service, unless he shall apply for and receive his salary deductions: provided, that such member shall not be considered as retaining such position beyond December 31, 1957, or the expiration of 5 years of such military service, whichever is later.

(e)(1) A member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1) of

§ 5-701, if such member deposits a sum equal to the entire amount, including interest (if any), refunded to him for such period of government service. A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall deposit such sum, plus interest computed in accordance with paragraph (2) of this subsection, with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712. All other members shall deposit such sums with the District of Columbia Retirement Board for credit to the revenues of the District of Columbia. If the member so elects, he may deposit the total amount of such refund in monthly installments not exceeding 24, except that in the case of a member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, such monthly installments shall be of equal amounts. No deposit shall be required for days of unused sick leave credited under § 5-712.

(2) Interest required on deposits under this subsection for members who are officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of return on investment (adjusted to the nearest one eighth of 1%) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712) for the period beginning on the 1st day of the 1st month which begins after the end of the service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one eighth of 1%) shall be used in determining the interest rate to be paid on deposits under this subsection;

(B) Interest shall be payable for the period beginning on the 1st day of the 1st month which begins after the end of the period of service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made; and

(C) If a member elects to make his deposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(f)(1) Any period of time during which a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia is on approved leave without pay to serve as a full-time officer or employee of a labor organization shall be considered to be police or fire service for purposes of this subchapter if such member files an election in accordance with paragraph (2) of this subsection and makes payments as described in paragraph (3) of this subsection. The basic salary in effect at any time for the grade in which a member was serving at the time he entered on approved leave described in the preceding sentence shall be considered to be the basic salary

in effect for such member for purposes of this subchapter if the period of time when such member is on approved leave is considered to be police or fire service under this subsection.

(2) To be eligible to have any period of approved leave described in paragraph (1) of this subsection considered to be police or fire service for purposes of this subchapter, a member described in such paragraph must, not later than the end of the 60-day period commencing on the day such member enters on such approved leave or the effective date of this subsection, whichever occurs later, file an election with the [District of Columbia Retirement Board] to have such period of approved leave considered to be police or fire service for purposes of this subchapter.

(3)(A) To have any period of approved leave described in paragraph (1) of this subsection occurring after the effective date of this subchapter considered to be police or fire service, a member described in such paragraph must each month deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712 a sum equal to one-twelfth the annual new entrant normal cost of the annuity of a member receiving the basic salary in effect during such month for the grade in which such member was serving at the time such member entered on such leave.

(B) To have any period of approved leave described in paragraph (1) of this subsection which occurred before the effective date of this subchapter considered to be police or fire service, a member described in such paragraph must deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712, in a manner to be determined by the District of Columbia Retirement Board, a sum equal to the new entrant normal cost of the annuity of a member receiving the basic salary in effect during the period of such leave for the grade in which such member was serving at the time such member entered on such leave.

(C) The District of Columbia Retirement Board shall make an annual determination of the new entrant normal cost for purposes of subparagraphs (A) and (B) of this paragraph according to information supplied by the actuary retained pursuant to § 1-722.

(4) For purposes of this subsection, the term "labor organization" means any labor organization recognized as an exclusive representative of members or officers of the Metropolitan Police force or the Fire Department of the District of Columbia for purposes of collective bargaining pursuant to § 1-617.10.

(g) The total service of a member shall be the full years and 12th parts thereof, excluding from the aggregate any fractional part of a month.

(h)(1) Except as provided in paragraph (2) of this subsection, notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this act to such individual or to the surviving spouse or child is to be based, if such

individual or the surviving spouse or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old age or survivors benefits under § 202 of the Social Security Act based on such individual's wages and self-employment income. If in the case of the individual or the surviving spouse such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in § 216(a) of the Social Security Act) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the District of Columbia Retirement Board shall re-determine the aggregate period of service upon which such annuity is based, effective as of the 1st day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health and Human Services shall, upon the request of the Mayor, inform the Mayor whether or not any such individual or the surviving spouse or child is entitled at any specified time to such benefits; and the Mayor shall forward this information to the District of Columbia Retirement Board.

(2)(A)(i) Except as provided in sub-subparagraph (ii) of this subparagraph, and subject to subparagraph (D) of this paragraph, each member or former member who has performed military service before the date of the separation on which the entitlement to any annuity under this act is based may elect to retain credit for the service by paying (in accordance with such regulations as the District of Columbia Retirement Board shall issue) to the office by which the member is employed (or, in the case of a former member, to the appropriate benefits administrator) an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37, United States Code, to the member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the member may provide, or, if the District of Columbia Retirement Board determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the District of Columbia Retirement Board under subparagraph (C) of this paragraph. Payment of such amount by an active member must be completed prior to the member's date of retirement or October 1, 2006, whichever is later, for the member to retain credit for the service.

(ii) In any case where military service interrupts creditable service under this section and reemployment pursuant to chapter 43 of title 38, United States Code [38 U.S.C. § 4301 et seq.], occurs on or after August 1, 1990, the deposit payable under this subparagraph may not exceed the amount that would have been deducted and withheld under this act from basic pay during the period of creditable service if the member had not performed the period of military service.

(B) Any deposit made under subparagraph (A) of this paragraph more than 2 years after the later of:

(i) October 1, 2004; or

(ii) The date on which the member making the deposit first becomes a member following the period of military service for which such deposit is due, shall include interest on such amount computed and compounded annually

beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this subsection shall be equal to the interest rate that is applicable for such year under subsection (e)(2).

(C) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the District of Columbia Retirement Board as the District of Columbia Retirement Board may determine to be necessary for the administration of this section; and the Mayor shall forward this information to the District of Columbia Retirement Board.

(D) Effective with respect to any period of military service after November 10, 1996, the percentage of basic pay under 37 U.S.C. § 204, payable under subparagraph (A) of this paragraph shall be equal to the same percentage as would be applicable under § 5-706 for that same period for service as a member subject to subparagraph (A)(2) of this paragraph.

(i)(1) Any member who is an officer or member of the District of Columbia Fire and Emergency Medical Services Department who was transferred pursuant to § 5-409.01, and who elects to, shall be covered by Chapter 9 of Title 1, and shall receive credit for prior years of service within the District of Columbia Fire and Emergency Medical Services Department as provided in subparagraphs (2), (3), and (4) of this subsection.

(2) Solely for the purposes of determining vesting and retirement eligibility, members shall receive credit for prior service with the District of Columbia Fire and Emergency Medical Services Department.

(3) Members shall be eligible to purchase benefit accrual service for some or all of the time they were employed by the District of Columbia Fire and Emergency Medical Services Department. The member shall deposit to the credit of the District of Columbia Police Officers and Fire Fighters' Retirement Fund an amount that is equal to the dollar increase in the present value of future benefits which results from crediting the prior service. The present value of future benefits shall be calculated on the actuarial assumptions and methods used to calculate the present value of future benefits pursuant to § 1-907.03(a)(3)(B) for the applicable fiscal year. Upon separation from District of Columbia employment for reasons other than retirement, any firefighter who purchased prior service credit shall receive that purchased amount along with any interest credited to the amount. Any firefighter who withdraws the purchased amount and is later reinstated shall not be entitled to this prior service credit until the purchased amount plus interest is again deposited.

(4) For the purposes of this section, the term "prior service" means any prior service in the District of Columbia Fire and Emergency Medical Services Department, regardless of whether there is a break in service.

(j) Service as a retired police officer hired pursuant to § 5-761, shall not count as creditable service for the purposes of this section.

(k)(1) An employee hired as a lateral law enforcement officer pursuant to § 1-610.72, shall be covered by Chapter 9 of Title 1. These lateral law enforcement officers shall be treated as new hires for retirement purposes and for the purposes of this section except as provided by law for federal govern-

ment and military service and as provided by subparagraph (B) of this paragraph.

(2) In computing length of service of a retiring lateral law enforcement officer hired pursuant to § 1-610.72, credit shall be granted for prior law enforcement service outside the Metropolitan Police Department only if the lateral law enforcement officer has deposited to the credit of the Police Officers' and Firefighters' Retirement Fund an amount equal to the dollar increase in the present value of future benefits that results from crediting the prior service. The calculation of the present value of future benefits shall be based on the actuarial assumptions and methods used to calculate the present value of future benefits pursuant to § 1-907.03(a)(3)(B) for the applicable fiscal year. Upon separation from District law enforcement duty for reasons other than retirement, any law enforcement officer who purchased prior service credit shall receive that purchase amount along with any interest credited on the amount. Any law enforcement officer that withdraws the purchase amount and is later reinstated shall not be entitled to this prior service credit until the purchase amount plus interest is again deposited.

(1) Service as a former Metropolitan Police Department detective hired as a detective advisor pursuant to § 5-129.31 [expired] shall not count as creditable service for the purposes of this section.

(Sept. 1, 1916, ch. 433, § 12(c); Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3; Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(2); Oct. 1, 1976, D.C. Law 1-87, § 9, 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 202(a), 208(a)(2); Mar. 24, 1990, D.C. Law 8-97, § 5, 37 DCR 1046; Oct. 3, 2001, D.C. Law 14-28, § 203, 48 DCR 6981; Nov. 22, 2003, 117 Stat. 1386, Pub. L. 108-133, § 2; Mar. 13, 2004, D.C. Law 15-105, § 39, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 13(a), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(a), 53 DCR 6794; Mar. 31, 2009, D.C. Law 17-356, § 3(b), 56 DCR 1614.)

Cross references. — District of Columbia police officers and firefighters retirement fund, see § 1-712.

Retirement fund for police officers and firefighters, see § 1-903.01.

Transfer from Metropolitan Police to Capitol Police, "metropolitan police force" and "police service" defined, see § 10-505.05.

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-701, 5-705, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-761, 5-762, 5-1304, 6-223, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-610. 1973 Ed., § 4-523.

Effect of amendments. — D.C. Law 14-28 added subsec. (i).

Pub. L. 108-133, in subsec. (h), substituted "(h)(1) Except as provided in paragraph (2) of this subsection, notwithstanding" for "(h) Notwithstanding", and added paragraph (2).

D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 15-354, in subsec. (e), substituted "District of Columbia Retirement Board" for "Mayor of the District of Columbia"; in subsec. (f)(3), substituted "District of Columbia Retirement Board" for "Mayor"; in subsec. (h)(1), substituted "the District of Columbia Retirement Board shall re-determine" for "the Mayor shall redetermine", and added "; and the Mayor shall forward this information to the District of Columbia Retirement Board" at the end of the last sentence; in subsec. (h)(2)(A)(i), substituted "District of Columbia Retirement Board" for "Mayor"; in subsec. (h)(2)(C), added "; and the Mayor shall forward this information to the District of Columbia Retirement Board" at the end of the last sentence; and added subsecs. (j), (k), and (l).

D.C. Law 16-191, in subsec. (l), validated a previously made technical correction.

D.C. Law 17-356 rewrote subsec. (i).

Emergency legislation. — For temporary eligibility of police officers retired from the

Metropolitan Police Force to be rehired at the discretion of the Superintendent of the D.C. Public Schools as D.C. public school security personnel without jeopardy to their retirement benefits, see § 2 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

For temporary (90 day) amendment of section, see § 203 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 5-701.

Legislative history of Law 8-97. — Law 8-97, the “District of Columbia Comprehensive Retirement Reform Amendments Act of 1989,” was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1990, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 5-409.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Legislative history of Law 17-356. — For Law 17-356, see notes following § 5-701.

References in text. — Veterans Regulation No. 1(a), part I, paragraph I, referred to in subsection (b)(1)(B) of this section, was promulgated by Executive Order No. 6156, June 6, 1933 and was repealed by the Act of June 17, 1957, 71 Stat. 167, Pub. L. 85-56, § 2202.

The “effective date of this subsection,” referred to in subsection (f)(2), is prescribed by § 202(b) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

The “effective date of §§ 5-701 to 5-724,” referred to twice in subsection (f)(3), is prescribed by § 202(b) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

Section 202 of the Social Security Act, referred to in subsection (h) of this section, is codified as 42 U.S.C. § 402.

Former subsection (a) of § 216 of the Social Security Act, which defined retirement age and

which is referred to in subsection (h) of this section, was repealed by § 102(c)(1) of the Act of June 30, 1961, 75 Stat. 134, Pub. L. 87-64. Retirement age is defined by 42 U.S.C. § 416(e).

“This act,” referred to in subsection (h) of this section, means the Act of September 1, 1916, ch. 433.

Secretary of Health and Human Services, referred to in subsection (h) of this section, was substituted for Secretary of Health, Education and Welfare pursuant to the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

Editor’s notes. — Policemen and Firemen’s Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Coverage Under Federal Employees’ Retirement Act: See Historical and Statutory Notes following § 5-742.

Section 4 of D.C. Law 17-356 provided that this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-356 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-356, are not in effect.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-705. Application of amendment to § 5-704.

The amendments made by Pub. L. 96-122, § 208(a)(2), to § 5-704 shall not apply with respect to deposits made, in whole or in part, prior to the end of such 90-day period.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 208(b).)

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-611. 1973 Ed., § 4-523.1.

§ 5-706. Deductions, deposits, and refunds; order of persons entitled to refunds for deductions.

(a) On and after the first day of the first pay period which begins on or after October 26, 1970 there shall be deducted and withheld from each member's basic salary an amount equal to 7% of such basic salary for all members hired before the first day of the first pay period that begins after October 29, 1996, and 8% of such basic salary for all members hired on or after the first day of the first pay period that begins after October 29, 1996. In the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, such deductions and withholdings shall be paid to the District of Columbia Retirement Board and shall be deposited in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712; and in the case of any other member, such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(b)(1) Any member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, who is separated from his department, except for retirement as authorized by this subchapter, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(2) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia with less than 5 years of police or fire service who is separated from his department, except for retirement under § 5-709, § 5-710, or § 5-712, shall be refunded the amount of the deductions made from his salary under this subchapter. The receipt of payment of such deductions by such member shall void all annuity rights under this subchapter, except that if such member is subsequently reappointed to any department whose members come under this subchapter and such member elects, at the time of such reappointment, to redeposit the amount refunded to him pursuant to the preceding sentence plus interest computed in accordance with § 5-717(c), then credit shall be allowed under this subchapter for the prior period of service. Such redeposit (and the interest required thereon) may be made, at the election of the member, in a lump sum or in not to exceed 60 monthly installments, except that if such member dies before

depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(c) In order to facilitate the settlement of the accounts of each member coming under the provisions of this subchapter who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the District of Columbia Retirement Board shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

(1) To the beneficiary or beneficiaries designated in writing by such member, filed with the District of Columbia Retirement Board and received by him prior to the death of such member;

(2) If there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such member, or the survivor of them;

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member; provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(d) In order to facilitate the settlement of the accounts of each former member coming under the provisions of this subchapter who dies leaving no survivor entitled to receive an annuity under the provisions of this subchapter and before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the District of Columbia Retirement Board shall pay the difference to the person or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery by any other person of the amount so paid:

(1) To the beneficiary or beneficiaries designated in writing by such former member, filed with the District of Columbia Retirement Board and received by him prior to the death of such former member;

(2) If there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such former member, or the survivor of them; and

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the govern-

ment of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(e) Any individual withdrawing any distribution under this section, which distribution constitutes an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 135; 26 U.S.C. § 402(c)) ("Internal Revenue Code of 1986"), may elect, at the time and in the manner prescribed by the District of Columbia Retirement Board, and after receipt of proper notice, to have any portion of the distribution paid directly to an eligible retirement plan, within the meaning of section 402(c) of the Internal Revenue Code of 1986, in a direct rollover.

(f) The District of Columbia Retirement Board shall be entrusted with any transfer from another retirement plan for the purchase of service credit, including transfers allowed by sections 403(b) and 457 of the Internal Revenue Code of 1986 [26 U.S.C. § 403; 26 U.S.C. § 457]. Before any transfer is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed transfers for the purchase of service credit.

(g)(1) The District of Columbia Retirement Board shall also be entrusted with any rollover contribution from:

(A) A qualified plan described in section 401(a) or 403(b) of the Internal Revenue Code of 1986 [26 U.S.C. § 401; 26 U.S.C. § 403], excluding after-tax employee contributions;

(B) An annuity contract described in section 403(b) of the Internal Revenue Code of 1986 [26 U.S.C. § 403], excluding after-tax employee contributions;

(C) An eligible plan under section 457(b) of the Internal Revenue Code of 1986 [26 U.S.C. § 457] which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(D) Amounts transferred from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code of 1986 [26 U.S.C. § 408] that is eligible to be rolled over and would otherwise be includible in gross income.

(2) The rollover shall be separately accounted for as member contributions that were not previously taxed. Before any rollover is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed rollover contributions. The rollover shall be used to purchase service credit in addition to service credit provided under the provisions of § 5-704.

(h) The District of Columbia Retirement Board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan pursuant to the Internal Revenue Code of 1986. If a conflict should arise with a qualification requirement, the provision shall be interpreted in favor of maintaining the federal qualification requirements.

(i) The District of Columbia Retirement Board may adopt rules to implement this section.

(Sept. 1, 1916, ch. 433, § 12(d); Aug. 21, 1957, 71 Stat. 393, Pub. L. 85-157, § 3; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-693, § 1; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, § 1(13); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 122(b)(1), 208(a)(1); Apr. 9, 1997, D.C. Law 11-218, § 2(b), 43 DCR 6172; Oct. 1, 2002, D.C. Law 14-190, § 3722(a), 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 40(a), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 13(b), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(b), 53 DCR 6794.)

Cross references. — District of Columbia police officers and firefighters retirement fund, see § 1-712.

Retirement fund for police officers and fire fighters, see § 1-903.01.

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-704, 5-717, 5-731, 5-732, 5-733, 5-741, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-612. 1973 Ed., § 4-524.

Effect of amendments. — D.C. Law 14-190 added subsecs. (e) to (i).

D.C. Law 15-105, in subsec. (i), validated a previously made technical correction.

D.C. Law 15-354 substituted "District of Columbia Retirement Board" for "Mayor"; and substituted "District of Columbia Retirement Board" for "Custodian of Retirement Funds".

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 2(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournalment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

For temporary (90 day) amendment of section, see §§ 3622(a) and 3623 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 10-135. — For legislative history of D.C. Law 10-135, see Historical and Statutory Notes following § 5-745.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 5-701.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 5-133.19.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 5-409.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Short title. — Short title of subtitle B of title XXXVII of Law 14-190: Section 3721 of D.C. Law 14-190 provided that subtitle B of title XXXVII of the act may be cited as the Police and Fire Retirement Consolidation Amendment Act of 2002.

References in text. — The effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, referred to in the first sentence of subsection (a) of this section, is prescribed by § 2 of the Act of October 26, 1970, 84 Stat. 1136, Pub. L. 91-509.

Section 403(b) of the Internal Revenue Code of 1986, referred to in subsec. (d)(6) and (7), is codified as 26 U.S.C. § 403(b).

Section 457 of the Internal Revenue Code of 1986, referred to in subsec. (d)(6) and (7)(A)(iii), is codified as 26 U.S.C. § 457.

Section 401(a) of the Internal Revenue Code of 1986, referred to in subsec. (d)(7)(A)(i), is codified as 26 U.S.C. § 401(a).

Section 408(a) or 408(b) of the Internal Revenue Code of 1986, referred to in subsec. (d)(7)(A)(iv), is codified as 26 U.S.C. § 408(a) or 408(b).

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Full Funding of Pension Liability Reform Amendment Act of 1994: Section 301 of D.C. Law 10-135 amended the first sentence of (a) by inserting "(or, with respect to a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, 8% for each pay period which begins on or after October 1, 1995)" following "7%."

Section 3723 of D.C. Law 14-190 provided: "This subtitle subtitle B of title XXXVII, §§ 3721 to 3724, of D.C. Law 14-190 shall apply as of January 1, 2002."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Where fireman, earning basic salary and annual automatic increases due to length of service, resigned and later accepted a reappointment at basic salary, he was entitled only to basic salary until length of service should

again entitle him to automatic increases. Act July 1, 1930 [46 Stat. 839]; D.C. Code Supp. I, 1933, T. 20, § 616. *District of Columbia v. Smith*, 72 F.2d 735, 1934 U.S. App. LEXIS 4671 (1934).

§ 5-707. Payment of medical expenses — Active members.

Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Mayor, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon a certificate of the Mayor setting forth the necessity for such services or treatment and the nature of the injury or disease which rendered the same necessary.

(Sept. 1, 1916, ch. 433, § 12(e); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-613. 1973 Ed., § 4-525.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Where most of money paid by District of

Columbia under District of Columbia Disability Act for medical and hospital expenses of injured

employees came from district revenues and employee contributions, employee was entitled under the collateral source rule to recover for medical and hospital expenses in his tort suit against United States. 18 U.S.C. § 1346(b), D.C. Code §§ 4-502, 4-524, 4-525, 4-527(1), 4-528, 4-537, 31-721, 43-126, 47-309, 47-310; Reorganization Plan No. 3, 81 Stat. 948. *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

District of Columbia Disability Act did not provide District of Columbia metropolitan motorcycle policeman exclusive method of recovery for injury sustained when he was struck by government bus being driven on government business by employee of United States and policeman and his wife were not precluded from maintaining suit against United States under Federal Tort Claims Act. D.C. Code §§ 4-525, 4-527(1), 4-538, 18 U.S.C. § 1346(b). *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

District of Columbia police officers and fire fighters were exempted from Federal Employees Compensation Act to prevent double recoveries; there was never an intention to preclude recovery for medical care and compensation. 5 U.S.C. §§ 8101 et seq., 8101(1)(E)(iv); D.C. Code 1973, §§ 4-525, 4-538; D.C. Code 1981, § 4-633. *Brown v. Jefferson*, 451 A.2d 74, 1982 D.C. App. LEXIS 443 (1982).

Where there was no express language in statutes applicable to members of District of Columbia uniformed services denying administrative sick leave and medical benefits for injuries resulting from aggravation of preexisting medical conditions, later amendment to separate statute concerning retirement did not indicate intent to limit such benefits; thus uniformed personnel who had on-duty aggravation of preexisting condition were entitled to recovery. 5 U.S.C. § 6324; D.C. Code 1973, §§ 4-525, 4-527. *Brown v. Jefferson*, 451 A.2d 74, 1982 D.C. App. LEXIS 443 (1982).

§ 5-708. Payment of medical expenses — Total disability retirees.

(a) Subject to the provisions of subsection (b) of this section, the District of Columbia shall pay the reasonable costs of medical, surgical, hospital, or other related health care services of any officer or member of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division who:

- (1) Retires after August 16, 1971, under § 5-710; and
- (2) At the time of such retirement, has a disability caused by injury or disease contracted or aggravated in the line of duty, which is determined by, or under regulations of, the Mayor of the District of Columbia (hereafter in this section referred to as the "Mayor") to be a total disability.

(b) No payment may be made under this section for medical, surgical, hospital, or other related health care services provided a retired officer or member unless:

- (1) At the time such services are provided the disability of the retired officer or member has been determined by, or under regulations of, the Mayor to be a total disability;
- (2) Such services have been determined by, or under regulations of, the Mayor to be necessary and directly related to the treatment of the injury or disease which caused the disability of the retired officer or member; and
- (3) The retired officer or member submits to such medical examinations as the Mayor may require.

(c) The Mayor may determine that the disability of a retired officer or member is a total disability only if the Mayor finds that the retired officer or member is unable (because of the injury or disease causing his disability) to secure or follow substantially gainful employment. In determining whether employment is substantially gainful employment, the Mayor shall take into

account the amount of expenses incurred by, or which can reasonably be expected to be incurred by, the retired officer or member in securing the medical, surgical, hospital, or other related health care services necessitated by his disability, and such other factors as the Mayor deems advisable.

(d) In addition to any medical examination required under this subchapter, the Mayor shall require, in each year that payments under this section are made with respect to any retired officer or member, a medical review of the disability of such retired officer or member.

(e) The Mayor may provide for payments under this section to be made either directly to the retired officer or member or to the provider of the medical, surgical, hospital, or other related health care services.

(f) The Mayor shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(g) There are authorized to be appropriated from revenues of the United States such sums as may be necessary to reimburse the District of Columbia, on a monthly basis, for payments made under this section from revenues of the District of Columbia in the case of retired officers or members of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division.

(Aug. 16, 1971, 85 Stat. 341, Pub. L. 92-121, §§ 1-3; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-614. 1973 Ed., § 4-525a.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Change in Government. — This section

originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Negligent treatment.
Subsequent injuries.

In general.

Disability Act provides exclusive remedy against District of Columbia and its employees not only for injuries sustained by uniformed police officers and firefighters in performance of their duties, but also for injuries arising from negligent medical treatment that disabled retirees receive under Act. D.C. Code 1981, §§ 4-

614, 4-616. *Vargo v. Barry*, 667 A.2d 98, 1995 D.C. App. LEXIS 277 (1995).

Police and Firefighters Retirement and Disability Act is exclusive remedy for both injury suffered in performance of duty and those legitimate consequences flowing from compensable injury. D.C. Code 1981, § 4-601 et seq. *Ray v. District of Columbia*, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

By providing medical services to fire fighter for work-related back injury, employer was not operating in dual capacity so that employer would become liable in tort to fire fighter since employer provided medical services exclusively

to police and fire fighters in order to comply with statutory mandate. D.C. Code 1981, § 4-601 et seq. Ray v. District of Columbia, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Police and fire fighters in District of Columbia who are temporarily injured or permanently disabled while performing their duties are provided compensation under scheme set forth in Police and Firefighters Retirement and Disability Act. D.C. Code 1981, § 4-601 et seq. Ray v. District of Columbia, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Negligent treatment.

Firefighter who had retired due to injuries suffered while on duty and who received continuing treatment for injuries following retirement at Police and Firefighters Clinic under Disability Act could not bring medical malpractice action based on alleged negligence of Clinic in monitoring and treating firefighter's injuries; Disability Act provided exclusive remedy not only for injuries, but also for alleged negli-

gent medical treatment of injuries. D.C. Code 1981, §§ 4-614, 4-616. Vargo v. Barry, 667 A.2d 98, 1995 D.C. App. LEXIS 277 (1995).

Disability Act requires Police and Firefighters Retirement and Relief Board to provide administrative mechanism for receiving and addressing claims of negligent treatment by retired officers and for providing relief for injury in appropriate cases consistent with purposes of Act. D.C. Code 1981, §§ 4-614, 4-628. Vargo v. Barry, 667 A.2d 98, 1995 D.C. App. LEXIS 277 (1995).

Subsequent injuries.

Since fire fighter's work-related back injury was covered by Police and Firefighters Retirement and Disability Act, which afforded exclusive remedy, subsequent injuries resulting from medical services provided for initial injury were sufficiently connected so that fire fighter's remedy for later injuries was exclusively under Act. D.C. Code 1981, § 4-601 et seq. Ray v. District of Columbia, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

§ 5-708.01. Processing claims of injuries allegedly sustained within the performance of duty.

(a) For the purposes of this section, the term:

(1) "Department" means the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

(2) "Director" means either the director of medical services for the Metropolitan Police Department, or the medical services officer for the Fire and Emergency Medical Services Department.

(3) "Member" means a sworn employee of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

(b) The Director shall determine, based on a review of the unit commander's report on the cause of the injury or illness and after consultation with the Police and Fire Clinic physicians on the nature of the injury or illness, whether a member's injury or illness was sustained by the member in the performance of duty within 30 calendar days of a claim being reported to the Department. If the Director fails to meet the 30-day deadline, there shall be a rebuttable presumption that the member's injury or illness was sustained in the performance of duty. Until the presumption is rebutted by a finding by the Director that the injury or illness was not sustained in the performance of duty, the member's Department shall be responsible for all treatment costs and disability compensation pay.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(e-1), as added Sept. 30, 2004, D.C. Law 15-194, § 602(b), 51 DCR 9406; Mar. 2, 2007, D.C. Law 16-191, § 27(c), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Editor's notes. — Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: "Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress."

CASE NOTES

ANALYSIS

Burden of proof.
In general.

Burden of proof.

If the agency offers substantial evidence which disproves the initial inference afforded to a claimant who satisfies the prima facie case under Police and Firefighters Retirement and Disability Act, appellate court, then the ultimate burden of persuasion remains with the person claiming entitlement. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

If a claimant makes a prima facie case under Police and Firefighters Retirement and Disability Act, appellate court reviews the record to determine whether the District met its burden to produce substantial evidence tending to disprove the inference that the disability resulted from the on-duty injury. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

Once an officer makes a prima facie case under Police and Firefighters Retirement and

Disability Act, the employer bears the burden of disproving the inference that the officer's injury was caused by an on-duty injury. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

In general.

Officer, who initiated stop of a driver fatally shot following physical altercation with another responding police officer, was not entitled to recover on claim for administrative sick leave under Police and Firefighters Retirement and Disability Act due to psychological injury/illness diagnosed as acute stress disorder, or post-traumatic stress disorder (PTSD), where officer's involvement in the shooting was not beyond the stresses police officers face on a daily basis; although officer regretted initiating a stop that put another police officer's life in danger, officer did not actually see the struggle or shooting occur, officer suffered no physical injury, and officer had no history of a prior psychological illness. *Franchak v. D.C. Metro. Police Dep't*, 932 A.2d 1086, 2007 D.C. App. LEXIS 468 (2007).

§ 5-709. Retirement for disability — Not incurred in performance of duty.

(a) Except as provided in subsections (b) and (c) of this section, whenever any member coming under this subchapter completes 5 years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2% of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay; provided further, that the annuity of a member retiring under this section shall be at least 40% of his average pay.

(b) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, completes 5 years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity which shall be 70% of his basic salary at the time of retirement multiplied by

the percentage of disability for such member as determined in accordance with § 5-710(e)(2)(B), except that such annuity shall not be less than 30% of his basic salary at the time of retirement.

(c) [For applicability of (c), see Editor's notes.] Whenever the Board of Police and Fire Surgeons receives a recommendation from the Director for a disability retirement of a Metropolitan Police Department or Fire and Emergency Medical Services Department member pursuant to Chapter 6A of this title, the Board of Police and Fire Surgeons shall make a disability assessment, and if the member is unable to perform the full range of duties, shall retire the member as disabled regardless of whether the member is performing useful and efficient services that are less than the full range of duties. The member shall be retired on an annuity determined in accordance with subsection (b) of this section.

(Sept. 1, 1916, ch. 433, § 12(f); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 10(a); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 204(b)(1); Sept. 30, 2004, D.C. Law 15-194, § 602(c), 51 DCR 9406.)

Cross references. — Police officers and firefighters retirement fund, disability retirement rate, see § 1-725.

Section references. — This section is referred to in §§ 1-623.01, 5-131.03, 5-414, 5-544.01, 5-632, 5-634, 5-706, 5-710, 5-714, 5-716, 5-717, 5-721, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-615. 1973 Ed., § 4-526.

Effect of amendments. — D.C. Law 15-194, in subsec. (a), substituted "subsections (b) and (c)" for "subsection (b)"; and added subsec. (c).

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Editor's notes. — Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: "Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.

Termination of employment.

In general.

Finding that former Secret Service agent's psychological disability was not caused by performance of his duties, but rather by non-work-related circumstances, thereby denying agent higher level of retirement benefits, was not

supported by substantial evidence; expert psychologist and agent's treating psychologist unanimously agreed that onset of agent's depressive symptoms occurred as a result of work-related incident, no medical evidence or opinion supported that disability was caused from agent's particular personality traits, rather than work-related stresses and conditions, and agent's psychological difficulties did not predate his employment with Secret Ser-

vice. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Termination of employment.

Membership in the metropolitan police force at the time a recommendation or application for disability retirement reaches the Police and Firefighters' Retirement and Relief Board

(PFRRB) is sufficient to satisfy the membership requirements of the disability annuity provisions of the Police and Firefighters' Retirement and Disability Act (PFRDA), regardless of whether the member is terminated before the PFRRB comes to its decision. *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 2012 D.C. App. LEXIS 304 (2012).

§ 5-710. Retirement for disability — Incurred or aggravated in performance of duty.

(a) Except as provided in subsections (e) and (e-1) of this section, whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall, upon retirement for such disability, receive an annuity computed at the rate of 2 1/2 of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than 66⅔ of his average pay.

(b) In any case involving a member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, in which the proximate cause of injury incurred or disease contracted by the member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 1/2 of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than 66⅔ of his average pay.

(c) A member shall be retired under this section only upon the recommendation of the Board of Police and Fire Surgeons and the concurrence therein by the Mayor, except that in any case in which a member seeks his own retirement under this section, he shall, in the absence of such recommendation, provide the necessary evidence to form the basis for the approval of such retirement by the Mayor.

(d)(1) A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia may not retire and receive an annuity under this section on the basis of the aggravation in the performance of duty of an injury incurred or a disease contracted in the performance of duty unless:

(A) In the case of the aggravation of a disease, the disease was reported to the Board of Police and Fire Surgeons within 30 days after the disease was first diagnosed; or

(B) In the case of the aggravation of an injury, the injury was reported to the Board of Police and Fire Surgeons within 7 days after the injury was incurred or, if the member was unable (as determined by such Board) as a

result of the injury to report the injury within such 7-day period, within 7 days after the member became able (as determined by such Board) to report the injury.

(2) The burden of establishing inability to report an injury in accordance with subparagraph (B) of paragraph (1) of this subsection within 7 days after such injury was incurred and of establishing that such injury was reported within 7 days after the end of such inability shall be on the member claiming such inability. Any report under this subsection shall include adequate medical documentation. Nothing in this subsection shall be deemed to alter or affect any administrative regulation or requirement of the Metropolitan Police force or the Fire Department of the District of Columbia with respect to the reporting of an injury incurred or aggravated, or any disease contracted or aggravated, in the performance of duty.

(e)(1) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed in accordance with paragraph (2) of this subsection.

(2)(A) In the case of any member who retires under this subsection or subsection (b) of § 4-615, the Board of Police and Fire Surgeons shall determine, within a reasonable time and in accordance with regulations which the Mayor shall promulgate, the percentage of impairment for such member and shall report such percentage of impairment to the Police and Firemen's Retirement and Relief Board.

(B) In the case of any member described in subparagraph (A) of this paragraph, the Police and Firemen's Retirement and Relief Board shall determine within a reasonable time the percentage of disability for such member giving due regard to:

- (i) The nature of the injury or disease;
- (ii) The percentage of impairment reported pursuant to subparagraph (A) of this paragraph;
- (iii) The position in the Metropolitan Police force or the Fire Department of the District of Columbia held by the member immediately prior to his retirement;
- (iv) The age and years of service of the member; and
- (v) Any other factors or circumstances which may affect the capacity of the member to earn wages or engage in gainful activity in his disabled condition, including the effect of the disability as it may naturally extend into the future.

(C) The percentage of impairment or the percentage of disability for a member to whom this subsection applies may be redetermined at any time prior to the time such member reaches the age of 50 and his annuity shall be adjusted accordingly.

(D) The annuity of a member who is retired under this subsection shall be 70% of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with subparagraph (B) of this paragraph, except that such annuity shall not be less than 40% of his basic salary at the time of retirement.

(E) For purposes of this subsection:

(i) The term "impairment" means any anatomic or functional abnormality or loss existing after maximal medical rehabilitation has been achieved.

(ii) The term "disability" means any actual or presumed reduction in or absence of ability to engage in gainful activity which is caused, in whole or in part, by an impairment.

(e-1) Whenever the Board of Police and Fire Surgeons receives a recommendation from the Director for a disability retirement of a Metropolitan Police Department or Fire and Emergency Medical Services Department member pursuant to Chapter 6A of this title, the Board of Police and Fire Surgeons shall make a disability assessment and, if the member is unable to perform the full range of duties, shall retire the member as disabled regardless of whether the member is performing useful and efficient services that are less than the full range of duties. The member shall be retired on an annuity determined in accordance with subsection (e)(2) of this section.

(f) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons shall submit to the Mayor recommendations for regulations to establish specific criteria for determining whether an injury was incurred, or a disease was contracted, in the performance of duty and whether an injury or disease was aggravated in the performance of duty. The Mayor shall promulgate regulations establishing such criteria in a timely manner based on the recommendations of the Board.

(g)(1) In making determinations under this section and under § 4-615, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall make full use of the medical resources in the District of Columbia and shall make the widest practical use of the medical expertise available to them consistent with fair and even administration of Chapter 7 of Title 1.

(2) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall each submit to the Mayor recommendations for regulations to carry out the requirements of paragraph (1) of this subsection. The Mayor shall, in a timely manner and based on the recommendations of such Boards, promulgate regulations to carry out the requirements of such paragraph.

(3) Failure to promulgate such regulations, or failure to comply with such regulations, shall not invalidate any decision of the Mayor or the Police and Firemen's Retirement and Relief Board with respect to the retirement of any individual.

(Sept. 1, 1916, ch. 433, § 12(g); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(4); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I,

§ 121(b)(1), (2), (c); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 204(a), (b)(2), 213; Sept. 30, 2004, D.C. Law 15-194, § 602(d), 51 DCR 9406.)

Cross references. — Police officers and firefighters retirement fund, disability retirement rate, see 1-725.

Section references. — This section is referred to in §§ 1-623.01, 5-131.03, 5-414, 5-544.01, 5-632, 5-633, 5-701, 5-706, 5-708, 5-709, 5-711, 5-714, 5-716, 5-717, 5-721, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-

Prior Codifications. — 1981 Ed., § 4-616. 1973 Ed., § 4-527.

Effect of amendments. — D.C. Law 15-194, in subsec. (a), substituted “subsections (e) and (e-1)” for “subsection (e)”; and added subsec. (e-1).

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: “Titles I and VI of this act shall apply to

pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

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Computation of amount of annuity.

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Burden of proof.

Under the burden-shifting scheme by which a claimant seeking benefits from the Police and Firefighters' Retirement and Relief Board has the initial burden of producing evidence that the disabling injury was incurred in the performance of duty, when a claimant makes a showing that he or she was injured in an on-duty incident, the burden of proceeding shifts, and it is incumbent upon the government to adduce substantial evidence tending to disprove the inference that the disability resulted from on-duty injury; if the District fails to produce adequate proof to effectively rebut claimant's prima facie case, the claimant is entitled to rely on the logical inference that his or her disabili-

ty was the result of the proven on-duty injury. *Leach v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 965 A.2d 849, 2009 D.C. App. LEXIS 29 (2009).

Once police officer, who sought disability retirement benefits, met her initial burden of making a prima facie showing that her mental illness was related to on-duty causative event, burden shifted to police department to rebut officer's prima facie case, and department met its burden of production; officer's personnel file contained documents which called into question whether officer's allegations of harassment, insubordination, and discrimination had actually occurred, officer did not challenge department's internal investigations of her complaints, and there was no facial deficiency in the reports. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

When the claimant seeking disability retirement benefits makes a prima facie showing, the burden placed on the government is only one of production, and once the two parties have made their predicate showings, the ultimate issue becomes one of fact for the fact finder. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*,

882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Police officer who sought disability retirement benefits amply met her initial burden of making a prima facie showing that her mental illness was related to on-duty causative event, as her testimony and doctor's reports and expert testimony all supported this finding; doctor's retirement report linked officer's mental disability to her complaints of harassment and insubordination by co-workers and indicated that her condition had been ruled performance of duty (POD) by police department, officer testified about harassment she experienced, and record evidence of her complaints corroborated her claims. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

The evidentiary burden to prove a prima facie case so as to be entitled to disability retirement benefits is not onerous; there merely needs to be a sufficient basis to permit a reasonable inference that the disabling injury was incurred in the performance of duty. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

If the government fails to produce adequate proof to effectively rebut police officer's prima facie case, officer is entitled to rely on the logical inference that his or her disability was the result of the proven on-duty injury. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Claimant seeking disability retirement benefits has initial burden of producing evidence that disabling injury was incurred in performance of duty, and when claimant makes showing that he was injured in an on-duty incident, burden of proceeding shifts, and it is incumbent upon government to adduce substantial evidence tending to disprove the inference that the disability resulted from on-duty injury, and if government fails to produce adequate proof to effectively rebut claimant's prima facie case, claimant is entitled to rely on logical inference that his disability was result of the proven on-duty injury; although burden of proof shifts, ultimate burden of persuasion remains with the person claiming entitlement to a special pension rate. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Former Secret Service agent met initial burden of producing evidence that his psychological disability was incurred in performance of his duties, for purposes of recovering higher level of retirement benefits, in government-initiated involuntary retirement proceedings, and thus, burden shifted to government to present substantial evidence to rebut logical inference that agent's disabling condition re-

sulted from an on-duty injury, where agent did not suffer from a pre-existing psychological illness, psychologist opined that the major depression disabling agent was a direct consequence of his performance of duties, and agent's treating psychologist opined that agent's final breakdown was direct result of accumulated stress and depression from his employment. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

A firefighter is entitled to disability retirement if he proves that he is permanently disabled from the performance of duty, or, alternatively, if he is partially disabled and has not been provided a position in which he can actually perform useful and efficient service in spite of his partial disability. *Alexander v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 783 A.2d 155, 2001 D.C. App. LEXIS 224 (2001).

Computation of amount of annuity.

Retired police officer had necessary experience and skills for position of rental sales agent, such that Police and Firefighters' Retirement and Relief Board could use the position's salary when computing amount of retired officer's annuity; job listing required an applicant to have a high school education, 12 months of experience, and excellent communication skills and stated that employee would receive two weeks of computer training, and officer's supervisor testified that officer possessed excellent communication skills and above average computer skills. *Shaw v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 936 A.2d 800, 2007 D.C. App. LEXIS 566 (2007).

Retired police officer had necessary experience and skills for position of receptionist/administrative assistant, such that Police and Firefighters' Retirement and Relief Board could use the position's salary when computing amount of retired officer's annuity, although officer testified that he was not familiar with software applications specified in job listing; listing stated it was an entry level position, and Board reasonably could have concluded that he would be able to learn how to use the programs with some training. *Shaw v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 936 A.2d 800, 2007 D.C. App. LEXIS 566 (2007).

Retired police officer had necessary experience and skills for position of claim administrator, such that the position's salary could be used when computing amount of retired officer's annuity; job listing stated that applicant must have high school education, 12 months experience, excellent organizational skills, and be able to provide strong customer service, and officer's former supervisor testified that officer had excellent communication skills, maintained an effective working relationship with his superiors and peers, used tact and diplo-

macy when dealing with the public, and had the ability to relate to the community. *Shaw v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 936 A.2d 800, 2007 D.C. App. LEXIS 566 (2007).

Denial of disability.

Basis of officer's termination from metropolitan police force, i.e., that he had falsely denied when applying for employment having been examined for any disease or physical impairment, when in fact he had been tested for a heart condition, would not render him ineligible for disability retirement for which he was recommended prior to his termination, absent any indication that the purportedly disabling injuries he sustained in chasing a carjacker were related in any way to the condition of his heart, or to anything else he allegedly hid from police department when he was hired. *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 2012 D.C. App. LEXIS 304 (2012).

Determination by board.

Determination of whether an injury or disabling condition was incurred in the performance of duty is a factual question, for purposes of determining police and firefighters' entitlement to retirement disability benefits for injuries incurred in performance of duty; however, a finding on this issue will be upheld only if supported by substantial evidence. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Mere fact that one officer may be more susceptible to disabling injury than another cannot be treated as dispositive without careful analysis of circumstances or events which caused asserted propensity to manifest itself in disabling condition, in determining officer's entitlement to retirement disability benefits for injuries incurred in performance of duty; analysis must still center on whether the circumstances which caused the vulnerability to ripen into disability were a part of or external to the officer's service activities. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

When there is credible expert evidence establishing that both internal and external circumstances medically contributed to the ultimately disabling condition of a police officer or firefighter, the Police and Firefighters' Retirement and Relief Board is obligated to consider all the relevant factors, determine their relationship to each other, and if possible, evaluate their relative causative significance, for purposes of determining entitlement to retirement disability benefits for injuries incurred in performance of duty. *Beckman v. D.C. Police & Firefighters'*

Ret. & Relief Bd., 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

In ruling on a firefighter's petition for disability retirement, the Police and Firefighters' Retirement and Relief Board must objectively consider, by reference to evidence, whether the petitioner is actually performing useful and efficient service justifying a full time salary. *Alexander v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 783 A.2d 155, 2001 D.C. App. LEXIS 224 (2001).

Evidence.

Evidence was insufficient to support Police and Firefighters' Retirement and Relief Board's finding that retired police officer had skills and experience necessary for positions of probation clerk and social service representative, and thus positions' salaries could not be used when computing amount of retired officer's annuity; officer testified without contradiction that he never referred anyone to family, social, mental health, or other services and never visited homes and wrote reports as to social interaction of the people in the homes, nor did it appear that he had the skills and training to write the type of reports required by the jobs. *Shaw v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 936 A.2d 800, 2007 D.C. App. LEXIS 566 (2007).

Police and Firefighters' Retirement and Relief Board's characterization of doctor's testimony as providing "conflicting evidence" concerning police officer's pre-existing condition was without substantial support in the record, but Board's error was without legal consequence because substantial evidence supported Board's conclusion that officer's disabling condition was not suffered in performance of duty (POD); doctor testified that, although he could not be absolutely certain, he was of opinion to reasonable degree of medical certainty, that officer did not have pre-existing condition, and government did not present evidence to suggest that officer had underlying mental condition prior to her diagnosis. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Testimony and reports by doctors who have examined and diagnosed claimant, who seeks disability retirement benefits, constitute substantial evidence for consideration by Police and Firefighters' Retirement and Relief Board, and Board must make a careful analysis and provide a reasoned basis supported by substantial evidence for rejecting the expert opinion rendered as to causation. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Evidence supported Police and Firefighters' Retirement and Relief Board's decision that police officer's disabling condition, a depressive disorder, was not suffered in the performance of

duty (POD), such that officer was not entitled to the more generous retirement benefits afforded to officers who became disabled by injuries suffered in POD; officer's employment complaints of harassment and discrimination had not been substantiated or sustained, and doctor's testimonial evidence regarding POD status of the injury was based solely on officer's complaints. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Finding that former Secret Service agent's psychological disability was not caused by performance of his duties, but rather by non-work-related circumstances, thereby denying agent higher level of retirement benefits, was not supported by substantial evidence; expert psychologist and agent's treating psychologist unanimously agreed that onset of agent's depressive symptoms occurred as a result of work-related incident, no medical evidence or opinion supported that disability was caused from agent's particular personality traits, rather than work-related stresses and conditions, and agent's psychological difficulties did not predate his employment with Secret Service. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Reports of doctors who examined a claimant and have reached a diagnosis and expert opinion in their field of expertise, constitute substantial evidence for consideration by the Police and Firefighters' Retirement and Relief Board in determining whether claimant's injury or disabling condition was incurred in the performance of duty, for purposes of determining claimant's entitlement to disability retirement benefits. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

In general.

Police officers and firefighters who are disabled due to injuries suffered while in service of the public good should be afforded more generous retirement provisions, unless and until it can be proven that the disability is not related to an injury suffered in the performance of their public duties. *Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Statute providing more generous level of retirement benefits for police officers and fire-

fighters disabled in performance of duty covers disabling psychological conditions incurred in the performance of duty. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Percentage of disability.

Factual findings on police officer's or firefighter's psychological issues are material to a determination of percentage of disability. *Eckert v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 925 A.2d 550, 2007 D.C. App. LEXIS 254 (2007).

Psychological conditions are properly considered in a determination of disability of police officer or firefighter. *Eckert v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 925 A.2d 550, 2007 D.C. App. LEXIS 254 (2007).

Disabled police officer's psychological condition, even if not the result of the performance of duty, was material to a determination of percentage of disability. *Eckert v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 925 A.2d 550, 2007 D.C. App. LEXIS 254 (2007).

Termination of employment.

Membership in the metropolitan police force at the time a recommendation or application for disability retirement reaches the Police and Firefighters' Retirement and Relief Board (PFRRB) is sufficient to satisfy the membership requirements of the disability annuity provisions of the Police and Firefighters' Retirement and Disability Act (PFRDA), regardless of whether the member is terminated before the PFRRB comes to its decision. *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 2012 D.C. App. LEXIS 304 (2012).

Time of calculation.

"Final decision" as used in regulation requiring Police and Firefighters' Retirement and Relief Board to use salaries at time of Board's final decision when calculating disability retirement annuity was reasonably interpreted by Board as initial decision granting disability retirement, but incorrectly determining percentage of disability, not subsequent decision correctly calculating the annuity; Board's interpretation was consistent with statutory mandate to calculate the annuity based on salary at time of retirement. *Bausch v. D.C. Police & Firefighters' Ret.*, 926 A.2d 125, 2007 D.C. App. LEXIS 263 (2007).

§ 5-711. Application of amendment to § 5-710.

The amendment made by Pub. L. 96-122, § 204(a)(1), to § 5-710 shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who apply for disability retirement under § 5-710 prior to the end of the 90-day period beginning on November 17, 1979. The amendment made by Pub. L. 96-122, § 204(a)(2), to

§ 5-710 shall not apply with respect to injuries incurred or diseases first diagnosed prior to the end of such 90-day period.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 204(c).)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-617. 1973 Ed., § 4-527.1.

§ 5-712. Optional retirement.

(a) Any member who first becomes employed on or after the first day of the first pay period that begins after October 29, 1996, and who completes 25 years of service, and gives at least 60 days written advanced notice to his department stating his intention to retire and stating the date of which he will retire, may voluntarily retire from the service and shall be entitled to an annuity computed at a rate of 2.5% of the member's average pay times the number of years of the member's creditable service; provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver; provided further, that whenever the Mayor shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this subsection, then the Mayor shall be authorized, upon notice to the District of Columbia Retirement Board, to suspend the retirement provisions of this subsection in any 1 or more of the departments under his jurisdiction until such time as, in the opinion of the Mayor, public safety can be adequately protected without such suspension. Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and first becomes such a member after the end of the 90-day period beginning on November 17, 1979, and who completes 25 years of police or fire service and attains the age of 50 years and any other member (other than a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who first becomes such a member after the end of such 90-day period) who completes 20 years of police or fire service may, after giving at least 60 days written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½ of his average pay for each year of service; except that the rate of 3% of his average pay shall be used to compute each year's police or fire service in excess of:

(1) Twenty-five years, in the case of a member who becomes a member after the end of such 90-day period; or

(2) Twenty years, in the case of any other member; provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver; provided further, that whenever the Mayor or the Chief of the United States Secret Service Uniformed Division, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service Division shall determine that there exists an emergency

which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this subsection, then the Mayor or any of said Chiefs shall be authorized to suspend the retirement provisions of this subsection in any 1 or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(a-1) For the purposes of the first sentence of subsection (a) of this section, the term "creditable service" means the period of employment with the Metropolitan Police Department for police officers and the Fire Department of the District of Columbia for fire fighters first employed on or after the first day of the first pay period which begins after October 29, 1996, and includes any United States military service including the following:

(1) Credit for periods of military service prior to the member's date of separation, that interrupts the member's service with the Department, unless the member applies for and receives a refund of the member's salary deductions; and

(2) Credit for any period of time during which a member is on approved leave without pay to serve as a full-time officer or employee of a labor organization.

(a-2) Notwithstanding any other law, rule, or regulation, sworn members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department hired before or on September 11, 2008, may make a one-time election, at their option, in writing, to participate in one of the retirement programs created by subsection (a) of this section; provided, that any and all additional costs above the costs which would otherwise be incurred by the District for that sworn member pursuant to subsection (a) of this section shall be paid by the member, as determined by actuaries appointed by the District of Columbia. The District shall not be responsible for any additional administrative or program costs associated with a retirement program transfer authorized by this subsection. All costs associated with the transfer to a new retirement program under this subsection shall be borne by the member.

(a-3) Notwithstanding any other law, rule, or regulation, sworn members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department hired after September 11, 2008, shall make a one-time election, at their option, in writing, to participate in one of the retirement programs created by subsection (a) of this section; provided, that any and all additional costs above the costs which would otherwise be incurred by the District for that sworn member pursuant to subsection (a) of this section shall be paid by the member, as determined by actuaries appointed by the District of Columbia. The District shall not be responsible for any additional administrative or program costs associated with a retirement program selection authorized by this subsection. All costs associated with the selection of a retirement program under this subsection shall be borne by the member.

(b) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of 60 years shall, in the discretion of the Mayor, and any member of the United States Secret Service

Uniformed Division or of the United States Park Police force or of the United States Secret Service Division to whom this subchapter apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed under subsection (a) of this section.

(c) No annuity granted under subsection (a) or (b) of this section shall exceed 80% of the average pay of such member.

(d) In computing an annuity under this section, the police or fire service of a member who has not retired prior to the effective date of this subsection shall include, without regard to the limitation imposed by subsection (c) of this section, the days of unused sick leave credited to him. Days of unused sick leave shall not be counted in determining a member's eligibility for an annuity under this section.

(e) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 18 years of police or fire service may voluntarily retire from the service on or before December 31, 1980, and shall be entitled to an annuity computed at the rate of 2½% of the average pay of such member or officer for each year of service; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Police Officers and Fire Fighters' Retirement Fund shall be made from appropriations of the Metropolitan Police and Fire Departments.

(f) Notwithstanding the first sentence of subsection (a) of this section, Charles H. Ramsey, Chief of Police, may voluntarily retire from the service and, effective April 21, 1998, the date of his appointment as Chief of Police, shall be entitled to an annuity computed at a rate of 3.43% of his average pay times the number of years of his creditable service.

(g) Notwithstanding the first sentence of subsection (a) of this section, at the time that Chief of Police Cathy L. Lanier voluntarily retires or is otherwise separated from the Metropolitan Police Department, she shall be entitled to an annuity computed at 71.5% of her average highest base pay for 36 consecutive months, including longevity payments.

(Sept. 1, 1916, ch. 433, § 12(h); Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(5), (6); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(3); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1)-(3); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 203; Mar. 4, 1981, D.C. Law 3-128, § 8, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 4, 27 DCR 4417; Apr. 9, 1997, D.C. Law 11-218, § 2(c), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 13(c), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(d), 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-199, § 4, 53 DCR 8832; May 13, 2008, D.C. Law 17-154, § 7, 55 DCR 3678; Sept. 11, 2008, D.C. Law 17-224, § 2, 55)

Section references. — This section is referred to in §§ 1-623.01, 5-105.05, 5-414, 5-544.01, 5-716, 5-717, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-618. 1973 Ed., § 4-528.

Effect of amendments. — D.C. Law 15-354, in subsec. (a), added "upon notice to the

District of Columbia Retirement Board”.

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

D.C. Law 16-199 added subsec. (f).

D.C. Law 17-154 added subsec. (g).

D.C. Law 17-224 added subsecs. (a-2) and (a-3).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 2(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 3-128. — Law 3-128, the “Closing of a Portion of a Public Alley in Square 5263; the Police Officers, Firefighters, and Teachers Retirement Amendments; the District of Columbia Depository Act of 1977 Amendments; and the District of Columbia Motor-Vehicle Fuel and Sales Tax Act and the District of Columbia Sales Tax Act Amendments of 1980 Act of 1980,” was introduced in Council and assigned Bill No. 3-394, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-337 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-133. — Law 3-133, the “Securities Act Amendments, Personnel Act Clarification, and Voluntary Retirement Act of 1980,” was introduced in Council and assigned Bill No. 3-273, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 29, 1980, and September 16, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-254 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 5-701.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Legislative history of Law 16-199. — For Law 16-199, see notes following § 5-105.01.

Legislative history of Law 17-154. — For Law 17-154, see notes following § 5-105.01.

Legislative history of Law 17-224. — Law 17-224, the “Metropolitan Police Department Retirement Options Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-460, which was referred to the Committee of Public Safety and Judiciary. The Bill was adopted on first and second readings on June 3, 2008, and July 1, 2008, respectively. Signed by the Mayor on July 16, 2008, it was assigned Act No. 17-444 and transmitted to both Houses of Congress for its review. D.C. Law 17-224 became effective on September 11, 2008.

References in text. — The phrase “the effective date of this subsection,” referred to in the first sentence of (d), is prescribed by § 201(b) of Pub. L. 92-410, effective August 29, 1972, which states, that in part, “The amendments made by paragraphs (2) and (3) of subsection (a) shall be effective on the first day of the first pay period beginning on or after the date of enactment of this title.”.

Editor’s notes. — Policemen and Firemen’s Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Coverage Under Federal Employees’ Retirement Act: See Historical and Statutory Notes following § 5-742.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Under statute providing that, whenever police department member, who has served twenty-five or more years as member of department

and has reached age of fifty-five, he may, at his election, be retired from service and shall be entitled to retirement compensation, plaintiff, who, at time he made his election, was qualified

as to age and length of service requirements, was entitled to retirement even though he was thereafter suspended because of failure to explain source of some of his income. D.C. Code 1951, §§ 4-507, 4-508, 4-513. *Spencer v. Bullock*, 216 F.2d 54, 1954 U.S. App. LEXIS 2925 (C.A.D.C. 1954).

Under statute providing that police department member, who has served twenty-five or more years as member and has reached age of fifty-five, may, at his election, be retired from service and shall be entitled to retirement compensation, words "may, at his election, be retired" are equivalent to "may elect to be retired", and to say that policeman could, at his

election, be retired was not to say that after he had made his election commissioners could, at their election, refuse to retire him. D.C. Code 1951, § 4-508. *Spencer v. Bullock*, 216 F.2d 54, 1954 U.S. App. LEXIS 2925 (C.A.D.C. 1954).

Fireman suspended for misconduct was still a "member" of fire department within statute providing that any member attaining age of 50 years and completing 20 years of service may state intention to retire and shall be entitled to annuity and fireman, who had not been discharged had absolute right to elect retirement. D.C. Code 1951, §§ 4-521 to 4-538, 4-528(1). *Daigle v. McLaughlin*, 193 F.Supp. 902, 1961 U.S. Dist. LEXIS 3373 (D.D.C.1961).

§ 5-713. Involuntary separation from service.

If any member is injured or contracts a disease during his first 5 years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and if the Police and Firemen's Retirement and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department, such member shall, upon the approval of such finding by the head of his department, and without regard for the provisions of any other law or regulation, be separated from the service.

(Sept. 1, 1916, ch. 433, § 12(i); Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3.)

Section references. — This section is referred to in §§ 1-623.01, 5-107.04, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-619.
1973 Ed., § 4-529.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

CASE NOTES

ANALYSIS

Evidence.
Mental disability.
Review.

Evidence.

Where it is District of Columbia police department which initiates proceeding to retire officer against his will and for a disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Where involuntary separation is ordered by the District of Columbia Police and Firefighters' Retirement Relief Board for a disability unrelated to official service, evidence should clearly preponderate and be supported by find-

ings setting forth material facts. D.C. Code 1981, § 4-619. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 560 A.2d 492, 1989 D.C. App. LEXIS 63 (1989).

Mental disability.

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, determination that officer's disability was not related to his service was required to be supported by substantial and persuasive evidence and was required to be supported by findings of board setting forth material facts. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Where police officer was discharged for mental disability allegedly not caused or aggra-

vated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, action of Board was entitled to weight, but only if there were relevant findings and findings in turn were supported by adequate evidence, and findings must be enough to indicate that consideration was given by Board to claims of fact put forward by officer especially where his claims had at least some appearance of reasonableness and substantiality. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, essential findings by Board were required to be detailed only once by Board. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, officer was entitled to reconsideration, in absence of findings by Board, which merely registered its conclusion that disability of officer was not work related. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, and it was determined that officer was entitled to reconsideration of his

case because Board failed to make any findings to sustain its conclusion that disability was not work related and in the meantime functions of Board had been transferred to single Commissioner, commonly referred to as the Mayor, parties were entitled to submit additional evidence on reconsideration by the single Commissioner. D.C. Code §§ 4-521(2), 4-529. *Wingo v. Washington*, 395 F.2d 633, 1968 U.S. App. LEXIS 7118 (C.A.D.C. 1968).

Evidence did not support decision by District of Columbia Police and Firefighters' Retirement and Relief Board to involuntarily retire police officer without benefits on basis of psychiatric disability. D.C. Code 1981, § 4-619. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 560 A.2d 492, 1989 D.C. App. LEXIS 63 (1989).

Decision by District of Columbia Police and Firefighters' Retirement and Relief Board to involuntarily retire police officer without benefits on basis of psychiatric disability was inadequate as a matter of law, where there was no finding of what particular disease existed which disabled police officer nor any explanation as to why psychological condition attributed to him was a disabling one. D.C. Code 1981, § 4-619. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 560 A.2d 492, 1989 D.C. App. LEXIS 63 (1989).

Review.

Involuntary retirement proceeding filed pursuant to statute governing involuntary retirement of policemen and firemen would not be remanded where Police and Firemen's Retirement and Relief Board appeared to have misallocated burden of proof in proceeding; rather, Board would be ordered to show cause as to whether there was basis upon which its action could be sustained. *Hobson v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, 452 A.2d 1182, 1982 D.C. App. LEXIS 483 (1982).

§ 5-714. Recovery from disability; restoration to earning capacity; suspension or reduction of annuity.

(a)(1) If any annuitant retired under § 5-709 or § 5-710, before reaching the age of 50, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease:

(A) Upon reemployment in the department from which he was retired;

(B) Forty-five days from the date of the medical examination showing such recovery;

(C) Forty-five days from the date of the determination that he is so restored; or

(D) In the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department and who first became such a

member after the end of the 90-day period beginning on November 17, 1979, upon a refusal by such annuitant to accept an offer of reemployment in the department from which he was retired at the same grade or rank as he held at the time of his retirement, whichever is earliest.

(2) Earning capacity shall be deemed restored if, in each of 2 succeeding calendar years in the case of an annuitant who was an officer or member of the United States Park Police force, United State Secret Service Uniformed Division, or the United States Secret Service Division, or in any calendar year in the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department, the income of the annuitant from wages or self-employment or both shall be equal to at least 80% of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80% of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter; provided, that whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

(b) When an annuitant recovers prior to age 50 from a disabling condition for which he has been retired, and applies for reinstatement in the department from which he was retired, he shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his separation from the service; provided, that such applicant meets the current entrance requirements of such department as to character.

(c)(1) If any annuitant who is retired under § 5-709 or § 5-710, who prior to such retirement was an officer or member of the Metropolitan Police force or the Fire Department, and who first became such a member after the end of the 90-day period beginning on November 17, 1979, receives, directly or indirectly, income from wages or self-employment, or both, in any calendar year after the calendar year in which he retired:

(A) In an amount in excess of the difference between 70% of the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this subsection, then (except as provided in paragraph (4) of this subsection) the annuity of such annuitant shall be reduced by \$.50 for each \$1 of such income received during such year in excess of such difference; and

(B) In an amount in excess of the difference between the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this paragraph, then (except as provided in paragraph (4) of this subsection) the annuity of such annuitant shall be further reduced by \$.20 for each \$1 of such income received during such year in excess of such difference.

(2) For the purposes of paragraph (1) of this subsection, the term "current earnings limitation," with respect to an annuitant, means the greater of:

(A) The current annual salary for the position which such annuitant held immediately prior to the retirement of such annuitant; or

(B) The current entry level salary for active officers and members, divided by .7.

(3) The reductions provided for in paragraph (1) of this subsection shall be made as follows:

(A) Such reductions shall be prorated over a period of 12 consecutive months, with equal amounts withheld from each payment of annuity during such 12-month period; and

(B) The 12-month period during which such reduction is made shall begin as soon after the end of the calendar year involved as is administratively practicable (as determined in accordance with regulations which the District of Columbia Retirement Board shall promulgate).

(4) If the District of Columbia Retirement Board determines that the level of income of an annuitant whose annuity would otherwise be reduced in accordance with paragraph (1) of this subsection has decreased significantly (other than in accordance with normal income fluctuations for such annuitant) during the period in which such reduction would occur, the District of Columbia Retirement Board may authorize the withholding during such period, or any portion thereof, of such lesser amount than the amount prescribed in such paragraph as the District of Columbia Retirement Board considers appropriate or the District of Columbia Retirement Board may waive the requirements of paragraph (1) of this subsection if he finds that circumstances justify such waiver.

(5)(A) Any annuitant who is retired under § 5-709 or § 5-710 and who prior to such retirement was an officer or member of the Metropolitan Police force or the Fire Department shall, at such times as the District of Columbia Retirement Board shall by regulation prescribe, submit to the District of Columbia Retirement Board a notarized statement containing such information as the District of Columbia Retirement Board shall by regulation require with respect to the income received by such annuitant from wages or self-employment, or both. After examining such statement, the District of Columbia Retirement Board may require such annuitant to submit to the District of Columbia Retirement Board a further notarized statement containing such additional information with respect to the income received by such annuitant from wages or self-employment, or both, as the District of Columbia Retirement Board deems appropriate.

(B) Any annuitant described in subparagraph (A) of this paragraph who willfully furnishes materially false information with respect to his income in any statement required to be submitted under such subparagraph shall forfeit all rights to his disability annuity. Any such annuitant who refuses or otherwise willfully fails to timely submit such statement as required by this section, payment of the annuity of such annuitant shall cease and such annuitant shall not be eligible to receive such annuity or part thereof for the period beginning on the date after the final day for timely filing of such statement and ending on the date on which the District of Columbia Retirement Board receives such statement. Nothing in this subparagraph shall affect any rights to a survivor's annuity under § 5-716 based upon the service of such annuitant.

(Sept. 1, 1916, ch. 433, § 12(j); Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(7); Nov. 15, 1977, 91 Stat.

1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 205(a); Apr. 13, 2005, D.C. Law 15-354, § 13(d), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(e), 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-199, § 4, 53 DCR)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-715, 5-721, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and

Prior Codifications. — 1981 Ed., § 4-620. 1973 Ed., § 4-530.

Effect of amendments. — D.C. Law 15-354 substituted "District of Columbia Retirement Board" for "Mayor".

D.C. Law 16-191, in subsecs. (a) and (c), substituted "Fire Department" for "Fire Department of the District of Columbia".

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

Editor's notes. — Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

CASE NOTES

ANALYSIS

Burden of proof.
Due process.
Earning capacity.
False information.
Hearsay.
Income.
Medical examination.
Offset.
Reinstatement of annuity.
Review.
Termination of annuity.
Validity.

Burden of proof.

Police and Firemen's Retirement and Relief Board improperly placed burden of proof on disability retiree by stating that he came before the Board to show cause why he had not recovered from the disability for which he was retired. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, 444 A.2d 16, 1982 D.C. App. LEXIS 315 (1982).

Police and Firemen's Retirement and Relief Board committed reversible error by placing upon former police officer the burden of demonstrating with reasonable medical certainty that officer was not recovered from his disability, in that Board had burden of demonstrating with substantial evidence that former officer had recovered. D.C. Code §§ 1-1501, 1-1509(b), 1-1510, 4-533. *Kea v. Police & Firemen's Retirement & Relief Bd.*, 429 A.2d 174, 1981 D.C. App. LEXIS 245 (1981).

Due process.

Retired police officer had property interest protected by due process clause of the Fifth Amendment in his disability annuity, but such protected property interest did not extend to method to be used in determining officer's restoration to earning capacity and consequent

termination of annuity; thus, changing method of determining earning capacity did not violate due process even though change occurred after officer retired. D.C. Code 1981, § 4-620(a); U.S.C. Const. Amend. 5. *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

Earning capacity.

Amendment to statute providing for termination of disability annuity for retired police officer upon finding that officer's earning capacity in any calendar year equals or exceeds 80% of current rate of compensation of position occupied by officer immediately prior to retirement was applicable to police officer who retired before statute was amended and where statute provided for determination of earning capacity to be made over two succeeding calendar years where the amendment, as indicated by its legislative history, was intended to apply to both current and future retirees. D.C. Code 1981, § 4-620(a). *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

Under statute governing determination of whether disability annuitant has been restored to "earning capacity," in determining restoration to earning capacity for disability annuitant who was previously an officer of police department and who is younger than 50, standard is that when earned income reaches or exceeds the 80 percent of current rate of officer's position, former officer's disability annuity must be terminated. D.C. Code 1981, §§ 4-620(a), 4-620(a)(1, 2). *McMullen v. Police & Firefighter's Retirement & Relief Bd.*, 465 A.2d 364, 1983 D.C. App. LEXIS 448 (1983).

Where disability annuitant earned in 1980 more than 80 percent of what he would have earned in position he held prior to his retirement, he was no longer eligible for a disability

annuity, notwithstanding that annuitant returned an amount of his 1980 overtime pay to his employer sufficient to reduce amount to below 80 percent, because return of that money did not reduce amount he actually earned in 1980. D.C. Code 1981, §§ 4-620(a), 4-620(a)(1, 2). *McMullen v. Police & Firefighter's Retirement & Relief Bd.*, 465 A.2d 364, 1983 D.C. App. LEXIS 448 (1983).

Police and Firemen's Retirement and Relief Board was correct in finding that annuitant's income exceeded 80 percent level for 1974 and 1975 and that his earning capacity had thus been restored for those years, warranting cessation of his annuity. D.C. Code § 4-530. *Roberts v. Police & Firemen's Retirement & Relief Board*, 412 A.2d 47, 1980 D.C. App. LEXIS 250 (1980).

False information.

Conduct of petitioner in deliberately withholding from his notarized disability retiree employment questionnaire and report of income the fact that he earned additional income from self-employment in the sale of firearms amounted to a willful furnishing of materially false information to the police and fire fighters' retirement and relief board which forfeited all rights to his disability annuity notwithstanding claim that the income was not "reportable" to the board because it purportedly represented a capital loss for federal income tax purposes. D.C. Code 1981, § 4-620(a), (a)(2), (c)(5)(B). *Simmons v. Police & Firefighters' Retirement & Relief Bd.*, 478 A.2d 1093, 1984 D.C. App. LEXIS 436 (1984).

Hearsay.

Hearsay consisting of statements and sworn affidavits of disinterested witnesses who allegedly purchased firearms from petitioner as well as copies of checks and a bill of sale linking petitioner with firearms sales, when found to be reliable and credible, was a proper basis for the police and fire fighters' retirement and relief board to find that petitioner had earned additional income from self-employment in sale of firearms which, when combined with wages earned, exceeded statutory income limitation and required termination of petitioner's disability annuity on ground that he had been restored to an earning capacity. D.C. Code 1981, § 4-620(a), (a)(2), (c)(5)(B). *Simmons v. Police & Firefighters' Retirement & Relief Bd.*, 478 A.2d 1093, 1984 D.C. App. LEXIS 436 (1984).

Income.

"Income" of retired District of Columbia policeman receiving disability annuity, for purposes of determining whether his income from sole proprietorship was at level which precluded payment of annuity under statute, properly referred to net profits rather than gross

receipts or sales. D.C. Code 1981, § 4-620(a)(2). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

In absence of contradictory legislative history, Police and Firemen's Retirement and Relief Board interpretation of statutory term "income" to mean "gross income" was consistent with use of gross salary figure employed in determining base comparison under statute terminating annuities upon restoration to earning capacity, that being 80 percent of rate of current compensation of position occupied immediately prior to retirement. D.C. Code § 4-530. *Roberts v. Police & Firemen's Retirement & Relief Board*, 412 A.2d 47, 1980 D.C. App. LEXIS 250 (1980).

Medical examination.

Policeman retired on pension for disability may be examined to determine whether he has sufficiently recovered to resume active duty (Act Feb. 17, 1923, 42 Stat. 1263). *Dougherty v. U.S. ex rel. Roberts*, 30 F.2d 471, 1929 U.S. App. LEXIS 2423 (1929).

In view of staleness of 18-month-old medical reports and testimony of one physician that he had not seen the disability retiree run and that the medical data was hopelessly out of date, substantial evidence did not sustain finding of Police and Firemen's Retirement and Relief Board that retiree had recovered and could return to work. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, 444 A.2d 16, 1982 D.C. App. LEXIS 315 (1982).

Offset.

Police and Firefighters Retirement and Relief Board reasonably construed retirement statute as conferring power on the Board to offset against retroactively reestablished annuity, when retired policeman's income fell below level which had rendered him temporarily ineligible, the amount received by the retired policeman during the period during which he had been proved to be ineligible but during which annuity continued until hearing which determined ineligibility and, pursuant to statute, for 45 days thereafter. D.C. Code 1981, § 4-620(a)(1)(C). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Reinstatement of annuity.

Former member of city police department was not entitled to reinstatement of his disability annuity, which was terminated when his earnings from employment rose above statutory limitation, although he contended that earning restrictions no longer applied to him because he had reached age 50; disability annuity statute makes clear that annuity, once terminated, can only be reestablished upon reoccurrence of disability and reduction of in-

come below statutory percentage ceiling. D.C. Code 1981, § 4-620(a). *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 626 A.2d 904, 1993 D.C. App. LEXIS 147 (1993).

Requests for additional information from retired policeman, seeking reinstatement of disability annuity on ground that his income had fallen below level which had rendered him temporarily ineligible, did not trigger the possibility of statutory penalties for failure to timely submit the information where none of the requests was for a "further notarized statement" as contemplated by the statute. D.C. Code 1981, § 4-620(c)(5)(A, B). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Even if retired policeman, seeking reinstatement of disability annuity after his income fell below level which had rendered him temporarily ineligible, had willfully delayed or refused filing of required notarized statement, statute did not permit the Police and Firefighters Retirement and Relief Board to withhold annuity for any period before the required statement was due nor for any period after that statement had been submitted. D.C. Code 1981, § 4-620(c)(5)(B). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Finding of Police and Firefighters Retirement and Relief Board that retired policeman had willfully failed to provide required information, so as to justify reestablishment of disability annuity only from date of decision and not from earlier date when his income fell below level which had created temporarily ineligibility, was not supported by substantial evidence. D.C. Code 1981, § 4-620(c)(5). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Annuitant, whose earning capacity Police and Firemen's Relief and Retirement Board had found had been restored for two years and whose annuity was terminated, was entitled to apply for reestablishment of his annuity any time after one full year elapsed during which his income fell below prescribed level for termination of annuity. D.C. Code § 4-530. *Roberts v.*

Police & Firemen's Retirement & Relief Board, 412 A.2d 47, 1980 D.C. App. LEXIS 250 (1980).

Review.

Court of Appeals may not substitute its judgment for that of Police and Firefighters' Retirement Relief Board on decision whether to terminate disability annuity. D.C. Code 1981, §§ 1-1510, 4-620(a). *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

Termination of annuity.

Police and Firefighters' Retirement and Relief Board's decision to terminate retired police officer's disability annuity on ground that officer had been restored to earning capacity was not arbitrary and capricious and was supported by substantial evidence. D.C. Code 1981, § 4-620(a). *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

Validity.

Disability annuity statute did not violate equal protection, although it provides that payment of annuity shall cease if annuitant's earning capacity is restored before age 50 but that annuitants earning income above statutory level after age 50 are not subject to reduction in benefits; there are valid reasons why Congress might have fixed age beyond which restored earning capacity would no longer disqualify annuitants for benefits. U.S.C. Const.Amend. 14; D.C. Code 1981, § 4-620(a). *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 626 A.2d 904, 1993 D.C. App. LEXIS 147 (1993).

Amendment to statute changing method of determining eligibility for retirement benefits for District of Columbia police officers did not create unconstitutional classification by not also being applicable to all federal law enforcement officers where the statute was rationally related to legitimate governmental interest in restoring financial viability of the District's pension program. D.C. Code 1981, § 4-620(a); U.S. Const.Amend. 5. *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

§ 5-715. Application of amendment to § 5-714.

The amendment made by Pub. L. 96-122, § 205(a)(2)(B), to § 5-714 shall apply with respect to income from wages or self-employment, or both, received directly or indirectly during calendar year 1979 or the calendar year after the year in which the member retires, whichever is later, and any calendar year thereafter.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 205(c).)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-621. 1973 Ed., § 4-530.1.

§ 5-716. Survivor benefits and annuities.

(a) If any member:

(1) dies in the performance of duty and the Mayor determines that:

(A) the member's death was the sole and direct result of a personal injury sustained while performing such duty;

(B) his death was not caused by his willful misconduct or by his intention to bring about his own death; and

(C) intoxication of the member was not the proximate cause of his death; and

(2) is survived by a survivor, parent, or sibling,

a lump-sum payment of \$50,000 shall be made to his survivor if the survivor received more than one half of his support from such member, or if such member is not survived by any survivor (including a survivor who did not receive more than one half of his support from such member), to his parent or sibling if the parent or sibling received more than one half of his support from such member. If such member is survived by more than 1 survivor entitled to receive such payment, each such survivor shall be entitled to receive an equal share of such payment; or if such member leaves no survivor and more than 1 parent or sibling who is entitled to receive such payment, each such parent or sibling shall be entitled to receive an equal share of such payment.

(a-1) In the case of any member who dies in the performance of duty after December 29, 1993, and leaves a widow or widower entitled to all or a portion of the benefit described in subsection (a) of this section, an additional annuity shall be paid. This annuity shall be equal to 100% of the member's pay at the time of death. The annuity shall be increased at the same rate as the change in the Consumer Price Index, as described in § 5-721. This benefit shall be paid in lieu of benefits provided for by subsections (b) and (c) of this section. However, after benefits provided for in this paragraph end, as provided in subsection (e) of this section, any remaining benefit pursuant to subsection (c) of this section shall commence to be paid.

(a-2) The determination of the Mayor authorized by subsection (a) of this section shall be subject to review and final determination by the District of Columbia Retirement Board.

(b) In case of the death of any member before retirement, of any former member after retirement, or of any member entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of:

(1) Forty per centum of such member's average pay at the time of death, or 40%:

(A) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the United States Park Police force,

the United States Secret Service Uniformed Division, or the United States Secret Service Division; or

(B) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia; or

(2) Forty per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death, or, for a member who was an officer or member of the United States Secret Service Uniformed Division, or the United States Secret Service Division, 40 percent of the corresponding salary for step 5 of the Officer rank in section 10203 of title 5, United States Code; provided, that such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(c) Each surviving child or student child of any member who dies before retirement, of any former member who dies after retirement, or of any member entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), shall be entitled to receive an annuity equal to the smallest of:

(1) In the case of a member or former member who is survived by a wife or husband:

(A) Sixty per centum of:

(i) The member's average pay at the time of death; or

(ii) The adjusted average pay of the former member in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(B) \$2,918.00, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718; or

(C) \$8,754.00, divided by the number of eligible children, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718, divided by the number of eligible children; and

(2) In the case of a member or former member who is not survived by a wife or husband:

(A) 75% of the member's average pay at the time of death, divided by the number of eligible children;

(B) In the case of a member who was an officer or member of the United States Park Police Force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, 75% of the adjusted average pay of the former member, divided by the number of eligible children; or

(C) In the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, 75% of the adjusted average pay of the former member, divided by the number of eligible children.

(d) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of this section shall be entitled to receive an annuity in the greater amount of: (1) \$3,144; or (2) thirty-five per centum of the basis upon which such relief or annuity was computed. Each child who, on October 3, 2001, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of subsection (c) of this section.

(e)(1) The annuity of the widow or widower under this section shall begin on the day after the date on which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age 60; provided, that any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce.

(2) The annuity of any child under this section shall begin on the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(A) The child becomes 18 years of age or, if over 18 years of age and incapable of self-support, becomes capable of self-support;

(B) The child marries; or

(C) The child dies.

(3)(A) The annuity of any student child under this section shall begin on the the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(i) The student child marries;

(ii) The student child ceases to be a student;

(iii) The student child reaches 22 years of age; or

(iv) The student child dies.

(B) For the purposes of this paragraph, a student child whose 22nd birthday falls on or after July 1st shall not be considered to have reached 22 years of age until the June 30th following the student child's actual 22nd birthday.

(4) If the annuity of a child under paragraph (2) or paragraph (3) of this subsection terminates because of marriage and such marriage ends, the annuity shall resume on the first day of the month in which it ends, but only if the individual is not otherwise ineligible for the annuity.

(5) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, no annuity of a child or student of a widow or widower under subsection (a-1) of this section shall be paid while an annuity benefit to a widow or widower under subsection (a-1) of this section is being paid.

(f) Any member retiring under § 5-709, § 5-710, or § 5-712, may at the time of such retirement, and any member entitled to receive an annuity under § 5-717 may at the time such annuity commences, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after such member's death; provided, that the person so designated be the surviving spouse or child of such member. Whenever such an

election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such member is reduced. The annuity payable to the member making such election shall be reduced by 10% of the annuity computed as provided in § 5-709, § 5-710, or § 5-712. Such increase in annuity payable to the designee shall be reduced by 5% for each full 5 years the designee is younger than the member, but such total reduction shall not exceed 40%. The increase in annuity payable to the designee pursuant to this subsection shall be paid in addition to the annuity provided for such designee pursuant to subsection (b) or subsection (c) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to subsections (b), (c), and (e) of this section. If, at any time after such former member's election, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in § 5-709, § 5-710, § 5-712, or § 5-717, as the case may be.

(Sept. 1, 1916, ch. 433, § 12(k); Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(8); Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 201(a)(4); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(4), (5); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 206(a)(1), 207(a)(2), 209(b); June 22, 1990, D.C. Law 8-145, § 2, 37 DCR 2977; Nov. 19, 1995, 109 Stat. 505, Pub. L. 104-52, § 630(b); Nov. 19, 1997, 111 Stat. 2184, Pub. L. 105-100, § 152(b)(1); Oct. 19, 2000, D.C. Law 13-172, § 1102, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 2102, 48 DCR 6981; Apr. 13, 2005, D.C. Law 15-354, § 13(e), 52 DCR 2638; Mar. 21, 2009, D.C. Law 17-321, § 2(a), 56 DCR 222; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(5).)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-702, 5-714, 5-718, 5-719, 5-721, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-747, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-622. 1973 Ed., § 4-531.

Effect of amendments. — D.C. Law 13-172 added subsec. (a-1), relating to additional annuities for certain individuals, and added par. (e)(5), relating to annuity payments to children with a surviving parent.

D.C. Law 14-28 rewrote subsec. (c)(1)(B) and (1)(C), rewrote the second sentence of subsec. (d) which had read: "Each child who, on said effective date, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of subsection (c) of this section.", and rewrote subsec. (e)(5).

D.C. Law 15-354 added subsec. (a-2).

D.C. Law 17-321, in subsections (e)(1) and (2), substituted "the day after the date on which the member or former member dies" for "1st day of the month in which the member or former member dies".

Pub. L. 111-282, in subsec. (b)(2), inserted " , or, for a member who was an officer or member of the United States Secret Service Uniformed Division, or the United States Secret Service Division, 40 percent of the corresponding salary for step 5 of the Officer rank in section 10203 of title 5, United States Code".

Emergency legislation. — For temporary (90-day) amendment of section, see § 1102 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 1102 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see §§ 1902 to 1904 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 8-145. — Law 8-145, the "District of Columbia Retirement Reform Act of 1979 Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-487, which was referred to the Committee

on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-201 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 17-321. — Law 17-321, the “Retired Police Annuity Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-743 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 22, 2008, it was assigned Act No. 17-625 and transmitted to both Houses of Congress for its review. D.C. Law 17-321 became effective on March 21, 2009.

References in text. — The District of Columbia Police and Firemen’s Salary Act salary schedule, referred to in subsection (b)(2) of this section, appears in § 5-541.01.

The effective date of the Policemen and Firemen’s Retirement and Disability Act Amendments of 1970, referred to in subsection (d) of this section, is prescribed by § 2 of the Act October 26, 1970, Pub. L. 91-509.

Editor’s notes. — Law 17-358 amended this section subject to congressional enactment.

Mayor authorized to issue actuarial study: Section 3 of D.C. Law 8-145 provided that to carry out the purposes of this act, the Mayor shall, pursuant to § 1-722(d)(1), appoint an enrolled actuary to perform the required actuarial study. The cost of the actuarial study shall be borne by the District of Columbia Police Officers’ and Fire Fighters’ Retirement Fund. The actuarial study shall be completed by June 10, 1990.

Accrual of benefits under D.C. Law 8-145: Section 4 of D.C. Law 8-145 provided that the

increased benefits provided for in this act shall begin to accrue on April 10, 1990, but shall not be paid until the change in benefits becomes effective pursuant to § 1-722(d)(1).

Policemen and Firemen’s Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Coverage Under Federal Employees’ Retirement Act: See Historical and Statutory Notes following § 5-742.

Applicability of § 152(b) of Pub. L. 105-100: Section 152(b)(2) of Pub. L. 105-100, 111 Stat. 2184, the District of Columbia Appropriations Act, 1998, provided that the amendment made by § 152(b)(1) shall apply with respect to any termination of marriage taking effect on or after November 1, 1993, except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment.

D.C. Law 13-172, § 1103, as amended by D.C. Law 14-28, § 2103, provided: “The change in benefits in section 1102(a) adding subsec. (a-1) shall apply beginning December 29, 1993.”

D.C. Law 14-28, § 2104, provided: “The change in benefits in section 2102(a) amending subsecs. (c), (d), and (e) shall apply beginning October 1, 2001.”

Section 3 of D.C. Law 17-321 provided that this act shall apply as of January 1, 2009.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Performance of duty.

In general.

Paternity determination for firefighter's putative child was outside special competence of Police and Firefighters' Retirement and Relief Board in connection with application for survivor benefits, and, thus, primary jurisdiction doctrine did not require court to defer exercising jurisdiction in action for declaratory judgment on parentage; although the Board generally had the authority to make findings of fact, the governing statute did not specifically recognize or confer any specialized competency upon the Board regarding paternity, the competing facts the Board identified strongly suggested

the possibility of fraud in acknowledgment of paternity, Board referred paternity question to court, and resolution of paternity by administrative body raised possibility of different determinations of parentage in different fora. *Matthews v. District of Columbia*, 875 A.2d 650, 2005 D.C. App. LEXIS 265 (2005).

Performance of duty.

Police officer who was off-duty and outside his jurisdiction when he was fatally shot did not die in the "performance of duty," precluding payment of statutory survivor benefits to officer's surviving wife; at the time of the shooting, the police officer had no authority to act as a police officer. *Rife v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 940 A.2d 964, 2007 D.C. App. LEXIS 704 (2007).

§ 5-717. Deferred annuities; refund of deductions; redemptions and interest.

(a) Except as provided in subsection (b) of this section, any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 5 years of police or fire service and who is thereafter separated from his department, except for retirement under § 5-709, § 5-710, or § 5-712, shall be entitled to an annuity commencing on the 1st day of the month during which such member attains the age of 55 or on the 1st day of the 1st month beginning after such member's separation from his department, whichever month occurs later. Such annuity shall be computed at the rate of 2½% of his average pay for each year of service up to 20 years of service and at the rate of 3% of his average pay for each year of service after 20 years of service, or, in the case of a member who first became such a member after the end of the 90-day period beginning on July 1, 1977, after 25 years of service, except that such annuity may not exceed 80% of the average pay of such member.

(b)(1) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 5 years of police or fire service and who is thereafter separated from his department (other than a member who retires under § 5-709, § 5-710, or § 5-712) may elect, at the time of his separation, to receive a refund of the amount of deductions made from his salary under this subchapter. Receipt of such refund by the member shall void all annuity rights under this subchapter.

(2)(A) Any member who, by electing to receive a refund under paragraph (1) of this subsection, loses annuity rights under this subchapter, may reestablish all such rights at any time prior to attaining the age of 55 by redepositing the amount of such refund plus interest computed in accordance with subsection (c) of this section.

(B) If any member who receives a refund under paragraph (1) of this subsection is subsequently reappointed to any department whose members

come under this subchapter and elects, at the time of such reappointment, to redeposit the amount refunded to him under paragraph (1) of this subsection plus interest computed in accordance with subsection (c) of this section, then credit shall be allowed under this subchapter for such member's prior period of service. Such redeposit (and the required interest thereon) may, at the election of the member, be made in a lump sum or in not to exceed 60 monthly installments, except that if the member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(c) The interest which is required by subsection (b)(2)(A) and (B) of this section and by subsection (b)(2) of § 5-706 to be paid by a member who redeposits the amount of previously refunded deductions shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of return on investment (adjusted to the nearest one eighth of 1%) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712) for the period beginning on the 1st day of the 1st month which begins after the end of the service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund if he makes a lump-sum payment or during which he makes the 1st monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one eighth of 1%) shall be used in determining the interest rate to be paid on redeposits under this subchapter;

(2) Interest shall be payable for the period beginning on the 1st day of the 1st month which begins after the end of the period of service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund;

(3) If a member elects to make his redeposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(l); as added Nov. 17, 1979, 93 Stat. 909, Pub. L. 96-122, § 207(a)(1)(B); Apr. 13, 2005, D.C. Law 15-354, § 13(f), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(f), 53 DCR 6794.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-706, 5-716, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-623. 1973 Ed., § 4-531.1.

Effect of amendments. — D.C. Law 15-354, in subsec. (c)(1), substituted "District of Columbia Retirement Board" for "Mayor".

D.C. Law 16-191, in subsec. (c)(1), deleted "of the District of Columbia" following "Retirement Board".

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 5-113.07.

§ 5-718. Cost-of-living adjustments of annuities.

(a) Each month the Mayor of the District of Columbia shall determine the per centum change in the price index. On the basis of this determination, and effective the 1st day of the 3rd month which begins after the price index shall have equaled the rise of at least 3% for 3 consecutive months over the price index for the base month, each annuity payable under this subchapter which: (1) is payable to a survivor of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division or the United States Secret Service Division; and (2) has a commencing date on or before such effective date shall be increased by 1% plus the per centum rise in the price index. For purposes of this subsection, the term "base month" means the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under this subsection, except that, until the 1st cost-of-living annuity increase under this subsection, the base month shall be the last month which was the base month for purposes of § 5-716.

(b) With respect to any annuity payable under this subchapter which is payable to a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia hired prior to January 1, 1980, or to a survivor of any such member, on January 1 of each year (or within a reasonable time thereafter), and for payments of benefits accrued by police officers and fire fighters after June 30, 1997, on January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(c)(1) If, in accordance with subsection (b) of this section, the Mayor determines in a year (beginning with 1999) that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(A) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under subsection (b) of this section, adjusted to the nearest 1/10 of 1 per centum; or

(B) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of 1/12 of the per centum change computed under subsection (b) of this section, multiplied by the number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1 per centum.

(2) On January 1, 1998, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index published for December 1997 over the price index published for June 1997. If such per centum change indicates a rise in the price index, effective March 1, 1998:

(A) Each annuity having a commencing date on or before September 1, 1997, shall be increased by an amount equal to such per centum change, adjusted to the nearest 1/10 of 1 per centum; and

(B) Each annuity having a commencing date after September 1, 1997, and on or before March 1, 1998, shall be increased by a pro rata increase equal to the product of 1/6 of such per centum change, multiplied by the number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1 per centum.

(c-1) With respect to any annuity payable under this section which is payable to a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Colombia, hired after December 31, 1979, or to a survivor of any such member, on January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(c-2)(1) If, in accordance with subsection (c-1) of this section, the Mayor determines in a year, beginning with 1997, that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(A) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under subsection (c-1) of this section, adjusted to the nearest 1/10 of 1%; or

(B) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of 1/12 of the per centum change computed under subsection (c-1) of this section, multiplied by the number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1%.

(2) On January 1, 1996, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index published for December 1995 over the price index published for June 1995. If such per centum change indicates a rise in the price index, effective March 1, 1996:

(A) Each annuity having a commencing date on or before September 1, 1995, shall be increased by an amount equal to such per centum change, adjusted to the nearest 1/10 of 1%; and

(B) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal to the product of 1/6 of such per centum change, multiplied by the number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1%.

(d) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installment shall after adjustment reflect an increase of at least \$1.

(e) For purposes of this section, the term "price index" means the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(m); as added Nov. 17, 1979, 93 Stat. 912, Pub. L. 96-122, § 209(a)(1)(B); Sept. 26, 1995, D.C. Law 11-52, § 806, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 11, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 718, Pub. L. 105-33, § 11013(a); Sept. 18, 1998, D.C. Law 12-152, § 207(a), 45 DCR 4045; Apr. 12, 2000, D.C. Law 13-91, § 136, 47 DCR 520.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-719, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203

Prior Codifications. — 1981 Ed., § 4-624. 1973 Ed., § 4-531.2.

Effect of amendments. — D.C. Law 13-91 validated previously made technical amendments.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 206(a) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Temporary Act of 1997 (D.C. Law 12-58, March 20, 1998, law notification 45 DCR 2093).

Emergency legislation. — For temporary amendment of section, see § 2 of the Cost of Living Adjustment Extension for Public Safety Personnel Emergency Amendment Act of 1994 (D.C. Act 10-324, August 18, 1994, 41 DCR 6002).

For temporary amendment of section, see § 511 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 806 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 206(a) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), § 206(a) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531), and § 206(a) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673).

For temporary amendment of section, see § 2(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

Legislative history of Law 10-135. — For legislative history of D.C. Law 10-135, see Historical and Statutory Notes following § 5-745.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-152. — Law 12-152, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998,” was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7, 1998 and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Editor's notes. — Application of Law 12-152: Section 209 of D.C. Law 12-152 provided that the act shall apply as of October 1, 1997.

Changes were made to this section to conform to Public Law 95-179, 91 Stat. 1371, approved November 15, 1977, striking “Executive Protective Service” and inserting “United States Secret Service Uniform Division” in its place wherever it appeared in the United States Code.

Lump-sum payments to certain retired employees: Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that, notwithstanding any other provision of law, in the case of each employee who retired from the Fire Department of the District of Columbia between November 24, 1984, and April 13, 1985 (both dates inclusive), and who on October 30, 1986 are receiving annuities based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than October 15, 1986, to each such employee a lump-sum payment equal to 3 percent of his or her annuity. Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Full Funding of Pension Liability Retirement Amendment Reform Amendment Act of 1992: Section 302 of D.C. Law 10-135 amends (b) and (c) to read as follows:

"(b) With respect to any annuity payable under §§ 4-607 to 4-630 which is payable to a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, or to a survivor of any such member, on January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

"(c)(1) If (in accordance with subsection (b) of this section) the Mayor determines in a year (beginning with 1997) that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to —

"(A) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under subsection (b) of this section, adjusted to the nearest $\frac{1}{10}$ of 1 per centum; or.

"(B) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of —

"(i) One-twelfth of the per centum change computed under subsection (b) of this section, multiplied by.

"(ii) The number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1 per centum.

"(2) On January 1, 1996 (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index published for December 1995 over the price index published for June 1995. If such per centum change indicates a rise in the price index, effective March 1, 1996 —

"(A) Each annuity having a commencing date on or before September 1, 1995, shall be increased by an amount equal to such per centum change, adjusted to the nearest $\frac{1}{10}$ of 1 per centum; and.

"(B) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal to the product or —

"(i) One-sixth of such per centum change, multiplied by.

"(ii) The number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1 per centum."

§ 5-719. Application of § 5-718.

Subsections (b) and (c) of § 5-718 shall apply:

(1) To any increase after the effective date of § 5-718 in annuities payable under § 5-716, except that with respect to the 1st date after the effective date of § 5-718 on which the Mayor is to determine a per centum change for the purpose of such an increase, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such 1st date over the price index published for the last month which was the base month for purposes of § 5-716(7) before the repeal of such paragraph (7) by Pub. L. 96-122, § 209(b); and

(2) To any increase in each annuity payable under this subchapter having a commencing date after the effective date of § 5-718, except that in the case of members hired on or after the 1st day of the 1st pay period that begins after October 29, 1996, such increase shall not exceed 3% per annum, nor exceed one increase per annum. Except that, with respect to a member who is an officer or

member of the Metropolitan Police force or the Fire Department of the District of Columbia hired after December 31, 1979, § 5-718(c-1) and (c-2) shall apply to all annuities payable under this subchapter.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 209(a)(2); Sept. 26, 1995, D.C. Law 11-52, § 806a, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-218, § 3, 43 DCR 6172.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-625. 1973 Ed., § 4-531.3.

Emergency legislation. — For temporary amendment of section, see § 512 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 806a of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 3 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 3 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 10-135. — For legislative history of D.C. Law 10-135, see Historical and Statutory Notes following § 5-745.

Legislative history of Law 11-52. — For

legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-718.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 5-701.

References in text. — The “effective date of § 4-624,” referred to in paragraph (2), is prescribed by § 209(d) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

The “Policemen and Firemen’s Retirement and Disability Act” referred to in paragraph (2), is the Act of September 1, 1916, 39 Stat. 718, ch. 433, § 12 which is codified as §§ 5-133.10, 5-119.10, 5-119.11, 5-701, 5-703, 5-704, 5-706, 5-707, 5-709, 5-710, 5-712—5-714, 5-716, 5-720, 5-721, 5-723, and 5-724.

Editor’s notes. — Full Funding of Pension Liability Retirement Reform Amendment Act of 1994: Section 303(a) of D.C. Law 10-135 amended (2) by adding a second sentence that reads: “Except that, with respect to a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, § 5-718(b) and (c) shall apply to all annuities payable under the Policemen and Firemen’s Retirement and Disability Act.”

§ 5-720. Funeral expenses.

The Mayor is authorized to pay a sum not exceeding \$300 in any 1 case to defray the funeral expenses of any deceased member dying while in the service thereof.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(l); Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3; redesignated § 12(n) Nov. 17, 1979, 93 Stat. 912, Pub. L. 96-122, § 209(a)(1)(A).)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-626. 1973 Ed., § 4-532.

Editor’s notes. — Policemen and Firemen’s Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-721. Duties of Mayor; proceedings related thereto; disability retiree to report employment and undergo medical examination; overpayments.

(a) The Mayor shall consider all cases for the retirement of members and all applications for annuities under this subchapter subject to review and final determination by the District of Columbia Retirement Board. In each case of retirement of a member the Mayor shall certify in writing the physical condition of the member for whom retirement is sought. The Mayor shall give written notice to any member under consideration by him for retirement to appear before him and to give evidence under oath. The proceedings before the Mayor involving the retirement of any member, or any application for an annuity under this subchapter, shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information which may be pertinent to the matter of such retirement or annuity. The Mayor is authorized to administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Mayor may apply to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the Court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of § 11-944.

(b)(1) If a member is retired under § 5-709 or § 5-710 and is employed on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, such member shall, in accordance with such regulations as the Mayor shall prescribe, notify the Mayor of the employment; and the Mayor shall, as soon as practicable after the receipt of such notice, require each such member to undergo a medical examination (satisfactory to the Mayor) of the disability upon which the member's retirement under such section is based. The Mayor shall not require employment questionnaires under § 5-714(c)(5) or the medical examination of such member under paragraph (2) of this subsection after such member reaches the age of 50.

(2) The Mayor shall, by regulation, require any annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who retired before, on, or after November 17, 1979, under § 5-709 or § 5-710 to undergo, during each 12-month period following the effective date of this paragraph, at least 1 medical examination of the disability upon which the annuitant's retirement under § 5-709 or § 5-710 is based. No such annuitant shall be required under such regulations to undergo a medical examination during any such 12-month period during which the annuitant was required to undergo a medical examination under

this section in connection with such annuitant's employment. Such annual examination shall be carried out by the Board of Police and Fire Surgeons or by a physician designated by the Board.

(3) Such regulations shall further provide for notification by the Board of Police and Fire Surgeons to each such annuitant as to the time and place for such examination and the consequences of failure to appear and submit to such examination.

(4) In any case in which the requirement to undergo a medical examination under this subchapter would impose on an annuitant an undue hardship because of the physical or mental condition of such annuitant, the Mayor, by regulation, shall provide other means sufficient to determine the continuance of the disability on which such annuitant's retirement under § 5-709 or § 5-710 is based.

(5) Such regulations shall further provide that, in any case involving any such member so retired who refuses or otherwise fails to undergo any medical exam required by this subchapter, payment of the annuity to such member shall cease and such member shall not be eligible to receive such annuity or any part thereof for any period commencing on the day next following the day on which such member was required to undergo such examination, and ending on the date on which such member undergoes such examination. Nothing in this subsection shall be construed as affecting any rights to a survivor's annuity under § 5-716 based upon the service of such member.

(c) Except in a case of fraud against the District of Columbia, the Mayor may waive collection of any amount less than \$100 which was paid to an annuitant in excess of the amount to which such annuitant was entitled under this subchapter.

(Sept. 16, 1916, 39 Stat. 718, ch. 433, § 12(m); Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(a); Sept. 3, 1974, 88 Stat. 1041, Pub. L. 93-407, title I, § 123; redesignated § 12(o) Nov. 17, 1979, 93 Stat. 912, Pub. L. 96-122, § 205(b), 210; Apr. 13, 2005, D.C. Law 15-354, § 13(g), 52 DCR 2638.)

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-716, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-627. 1973 Ed., § 4-533.

Effect of amendments. — D.C. Law 15-354, in subsec. (a), inserted "subject to review and final determination by the District of Columbia Retirement Board" in the first sentence.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

References in text. — Section 11-756 1981 Ed., formerly appearing at the end of the last sentence of subsection (a) of this section, was repealed by the Act of December 23, 1963, 77 Stat. 620, Pub. L. 88-241, § 21(a), and was replaced by § 11-982 1981 Ed.. Title 11 was entirely amended by § 111 of Pub. L. 91-358,

and the provisions of former § 11-982 1981 Ed. are now covered in § 11-944.

"The effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972," referred to in the first sentence of subsection (b)(1) of this section, is prescribed by § 118 of the Act of August 29, 1972, Pub. L. 92-410.

The "effective date of this paragraph," referred to in subsection (b)(2), is prescribed by § 205(c) of the Act of November 17, 1979, 93 Stat. 866, Pub. L. 96-122.

Mayor's Orders. — Order establishing policies and procedures for administering § 5-721(b): See Commissioner's Order No. 74-31, dated February 12, 1974, as amended by Mayor's Order No. 76-213, dated October 20, 1976.

Editor's notes. — Policemen and Firemen's Retirement and Disability Act: Section 3(r) of

Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Authority of board.
Burden of proof.
Findings.
Medical examination.
Overpayment and offset.
Review.

Authority of board.

Statute providing that Police and Firemen's Retiring and Relief Board of District of Columbia shall consider all cases for retirement and relief of members of Police Department, grants authority to Board to determine whether applicant for retirement is within pertinent statutory provisions as to age and service, but does not grant Board discretion to grant or deny applications for reasons not specified in statute. D.C. Code 1951, §§ 4-503, 4-504, 4-506 to 4-508, 4-510. *Bullock v. Spencer*, 112 F.Supp. 147, 1953 U.S. Dist. LEXIS 2733 (D.D.C.1953).

Burden of proof.

Police and Firemen's Retirement and Relief Board improperly placed burden of proof on disability retiree by stating that he came before the Board to show cause why he had not recovered from the disability for which he was retired. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, 444 A.2d 16, 1982 D.C. App. LEXIS 315 (1982).

Police and Firemen's Retirement and Relief Board committed reversible error by placing upon former police officer the burden of demonstrating with reasonable medical certainty that officer was not recovered from his disability, in that Board had burden of demonstrating with substantial evidence that former officer had recovered. D.C. Code §§ 1-1501, 1-1509(b), 1-1510, 4-533. *Kea v. Police & Firemen's Retirement & Relief Bd.*, 429 A.2d 174, 1981 D.C. App. LEXIS 245 (1981).

Government did not have burden of establishing that disabilities of retired Park Service officers, who did not contend that basic disease in case of either officer had been contracted in

performance of duty, were not aggravated by performance of duty to point of disablement. D.C. Code §§ 1-1501 to 1-1510, 4-527, 4-527(2). *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

Findings.

Agency's findings of fact are conclusive on court unless unsupported by substantial evidence in the record. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, 444 A.2d 16, 1982 D.C. App. LEXIS 315 (1982).

Evidence sustained findings of Police and Firemen's Retirement Board that disabilities of retired officers of United States Park Service were not caused or aggravated by service. D.C. Code §§ 1-1501 to 1-1510, 1-1510(3)(E), 4-527, 4-527(2). *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

Medical examination.

In view of staleness of 18-month-old medical reports and testimony of one physician that he had not seen the disability retiree run and that the medical data was hopelessly out of date, substantial evidence did not sustain finding of Police and Firemen's Retirement and Relief Board that retiree had recovered and could return to work. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, 444 A.2d 16, 1982 D.C. App. LEXIS 315 (1982).

Overpayment and offset.

Retirement statute implies a power in the Police and Firefighters Retirement and Relief Board to recover overpayments of disability annuities by way of civil proceedings in all cases of overpayment, irrespective of whether annuitant has been found guilty of fraud. D.C. Code 1981, § 4-627(c). *Ridge v. Police & Fire-*

fighters Retirement & Relief Bd., 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Where the Police and Firefighters Retirement and Relief Board claims overpayment of disability annuity with regard to which ineligibility has not been determined in a prior administrative hearing, even though annuity has since been reestablished, Board may recover the overpayments only by way of civil action and not by offset against retroactively established annuity. D.C. Code 1981, § 4-627(c). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

In calculating any offset against retroactively reestablished annuity, by reason of annuity received during period for which annuitant subsequently proved to be ineligible pursuant to income limitations, the Police and Firefighters Retirement and Relief Board must afford annuitant opportunity to present his views on

any amount in dispute before final determination is made, and offset may be applied only with respect to overpaid sums which were subject to the Board's prior ineligibility determination and with respect to which the annuitant has already had opportunity to seek judicial review. D.C. Code 1981, § 4-627(c). *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Review.

Decisions of retirement board are not excepted from judicial review notwithstanding statute excluding, from definition of "contested case" which may be subject of review, selection or tenure of an officer or employee of the District. D.C. Code §§ 1-1502(8)(B), 1-1510, 4-526, 4-527, 4-533. *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

§ 5-722. Police and Firemen's Retirement and Relief Board.

(a)(1) In order to carry out his responsibilities under this subchapter with respect to retirement and disability determinations, and related functions, the Mayor of the District of Columbia shall establish a Police and Firemen's Retirement and Relief Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of:

(A) Members and alternatives appointed from among persons who are employees of the District of Columbia, 1 member and 1 or more alternates from each of the following: the District of Columbia Office of Personnel, Corporation Counsel, Department of Human Services, the Metropolitan Police Force, and the Fire and Emergency Medical Services Department; and

(B) Two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia.

(2) The member, and 1 or more alternates, appointed to the Board from among employees of the Department of Human Services shall be medical officers. All appointments shall be made by the Mayor.

(b) The members appointed under subsection (a)(1)(B) of this section shall be appointed for 2 years, and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the Board in the same manner as persons employed intermittently under § 3109 of Title 5 of the United States Code. Such members shall be appointed within 90 days after September 3, 1974.

(c) The Mayor shall establish rules for the Board to assure that the Board functions fairly and equitably. The Mayor shall provide the staff necessary for the Board.

(d) In addition to the members and alternates of the Board designated by subsection (a) of this section, in all cases of retirement, disability, or other relief involving a member of the United States Secret Service Uniformed Division or

a member of the United States Secret Service Division, who contributes to the Policemen and Firemen's Relief Fund of the District of Columbia, a member and alternate of the United States Secret Service Uniformed Division or a member and alternate of the United States Secret Service Division, as designated by the Director, United States Secret Service Division, as appropriate shall sit as a member of the Police and Firemen's Retirement and Relief Board.

(Sept. 3, 1974, 88 Stat. 1041, Pub. L. 93-407, title I, § 122; Jan. 3, 1975, 88 Stat. 2179, Pub. L. 93-635, § 19; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Sept. 22, 1994, D.C. Law 10-174, § 2, 41 DCR 5171.)

Cross references. — Employees retirement program management, annual report, see § 1-732.

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-628. 1973 Ed., § 4-533a.

Legislative history of Law 10-174. — Law 10-174, the "Policemen and Firemen's Retirement Relief Board Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-578, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-294 and transmitted to both Houses of Congress for its review. D.C. Law 10-174 became effective on September 22, 1994.

References in text. — Office of Personnel was substituted for Personnel Office in subsection (a)(1)(A) of this section pursuant to Mayor's Order No. 79-84, dated May 10, 1979.

Department of Human Services was substituted for Department of Human Resources in subsection (a)(1)(A) and (a)(2) pursuant to Re-

organization Plan No. 2 of 1979, dated February 21, 1980.

Delegation of Authority. — Delegation of Rulemaking Authority under D.C. Official Code § 5-722(c) Regarding the Police and Firemen's Retirement and Relief Board, see Mayor's Order 2010-44, March 19, 2010 (57 DCR 2349).

Editor's notes. — Order establishing Board: See Organization Order No. 48, dated September 25, 1974.

Coverage Under Federal Employees' Retirement Act: See Historical and Statutory Notes following § 5-742.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-723. Accrue ment and payment of annuities; persons who may accept payment; waiver; reduction.

(a) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, accrues monthly (except that an annuity accrues over any portion of a month after the commencing date of such annuity but before the 1st day of the next month and is payable for such month, to include the month of death of the annuitant, in an amount prorated in a manner to be determined by the District of Columbia Retirement Board) and is payable on the 1st business day of the month after it accrues.

(b) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the state of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a

guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the state of residence of the claimant, payment may be made to any person who, in the judgment of the District of Columbia Retirement Board, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(c) Any person entitled to an annuity under this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the District of Columbia Retirement Board. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(d) In order to facilitate the settlement of the accounts of each person who, at the time of his death, was receiving or was entitled to receive an annuity under this subchapter, the District of Columbia Retirement Board shall pay all unpaid annuity due such person at the time of death to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

- (1) To the widow or widower of such person;
- (2) If there be no surviving spouse, to the child or children of such person, and descendants of deceased children, by representation;
- (3) If there be none of the above, to the parents of such person or the survivor of them; or
- (4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased person, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased person.

(e) Notwithstanding any other provision of law, the salary of any annuitant who first becomes entitled to an annuity under this subchapter, after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant's annuity under this subchapter and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant. The provisions of this subsection shall not apply to an annuitant employed by the District of Columbia government under the Retired Police Officer Redeployment Amendment Act of 1992 or the Detective Adviser Act of 2004. The provisions of this subsection shall not apply to an annuitant employed by the D.C. Public Schools under the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(n); Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3; redesignated 12(p) Nov. 17, 1979, 93 Stat. 912, Pub. L. 96-122, §§ 211, 212, 214; Mar. 15, 1990, D.C. Law 8-95, § 3, 37 DCR 786; Sept. 29, 1992, D.C. Law 9-163, § 3, 39 DCR 5705; July 23, 1994, D.C. Law 10-136, § 4, 41 DCR 3006; Sept. 30, 2004, D.C. Law 15-194, § 1121, 51 DCR 9406; Apr. 13, 2005, D.C. Law 15-354, § 13(h), 52 DCR 2638; Mar. 21, 2009, D.C. Law 17-321, § 2(b), 56 DCR 222.)

Cross references. — District of Columbia retirement board, see § 1-711.

Merit system, compensation for employees in Career, Educational, Legal, Excepted, and Management Supervisory Services, § 1-611.03.

Section references. — This section is referred to in §§ 1-623.01, 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-629. 1973 Ed., § 4-534.

Effect of amendments. — D.C. Law 15-354 substituted "District of Columbia Retirement Board" for "Mayor".

D.C. Law 17-321, in subsec. (a), substituted "such month, to include the month of death of the annuitant," for "such month".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Retired Police Officer Redeployment Temporary Amendment Act of 1989 (D.C. Law 8-3, May 23, 1989, law notification 36 DCR 4153).

For temporary (225 day) amendment of section, see § 3 of Retired Police Officer Redeployment Temporary Amendment Act of 1992 (D.C. Law 9-132, July 22, 1992, law notification 39 DCR 5813).

For temporary (225 day) amendment of section, see § 3 of Retired Police Officer Public Schools Security Personnel Deployment Temporary Amendment Act of 1993 (D.C. Law 10-5, July 31, 1993, law notification 40 DCR 5629).

Emergency legislation. — For temporary amendment of section, see § 3 of the Retired Police Officer Redeployment Emergency Amendment Act of 1992 (D.C. Act 9-201, April 24, 1992, 39 DCR 3215).

For temporary amendment of section, see § 3 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

For temporary (90 day) addition of § 5-723.01, see §§ 3622(b) and 3623 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 8-95. — Law 8-95, the "Retired Police Officer Redeployment Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-308, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-146 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-163. — For legislative history of D.C. Law 9-163, see Historical and Statutory Notes following § 5-761.

Legislative history of Law 10-136. — For legislative history of D.C. Law 10-136, see Historical and Statutory Notes following § 5-762.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Legislative history of Law 17-321. — For Law 17-321, see notes following § 7-716.

Expiration of Law 8-95. — Section 4(b) of D.C. Law 8-95 provided that the act shall expire on April 1, 1992.

Expiration of Law 9-163. — Section 6(b) of D.C. Law 9-163 provided that, except for section 5, the act shall expire on October 1, 1997. Repeal of the Expiration of Law 9-163: Section 2(b) of D.C. Law 12-253 repealed section 6(b) of D.C. Law 9-163.

Expiration of Law 9-163. — Section 2(b) of D.C. Law 12-253 repealed section 6(b) of D.C. Law 9-163.

References in text. — The "Retired Police Officer Redeployment Amendment Act of 1992," referred to in (e), is D.C. Law 9-163, effective September 29, 1992.

The "Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994" referred to in (e), is D.C. Law 10-136, effective July 23, 1994.

Editor's notes. — In subsection (e), "November 17, 1979" is substituted for "July 1, 1977" to correct an error in regard to the date of enactment of the District of Columbia Retirement Reform Act (D.C. Code, § 1-701 et seq.) as stated in the organic act; the date of enactment of the District of Columbia Retirement Reform Act is November 17, 1979.

Law 17-358 amended this section subject to congressional enactment.

Emergency Act 12-148, Emergency Act 12-220, Temporary Law 12-45, Emergency Act 12-440, Emergency Act 12-450, Emergency Act 12-507, Emergency Act 12-596, Emergency Act 13-26 and Temporary Law 12-204 all repealed section 6(b) of D.C. Law 9-163 or otherwise kept in effect the repeal of section 6(b) of D.C. Law 9-163.

Mayor authorized to issue regulations: Section 4 of D.C. Law 9-163 provided that the Mayor shall issue regulations necessary to carry out the provisions of this act.

Metal detectors authorized: Section 4 of D.C. 10-5 provided that to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board's commitment in the fiscal year 1992 budget process.

Policemen and Firemen's Retirement and Disability Act: Section 3(r) of Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Application of Law 10-136: See Historical and Statutory Notes following § 5-762.

Section 3 of D.C. Law 17-321 provided that this act shall apply as of January 1, 2009.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Constitutional Law k 3596; District of Columbia k 7.

Remand.

Salary basis.

Constitutional Law k 3596; District of Columbia k 7.

Remand.

Remand to District of Columbia Superior Court of remaining nonfederal claims in removed action where all federal claims were dismissed was appropriate, as those claims raised novel and complex issues of District law.

Cannon v. District of Columbia, 2012 WL 2673097 (2012).

Salary basis.

Relevant “salary basis” for determining whether retired police officers first employed by District of Columbia before 1987 and rehired by District after 2004 were exempt executive or administrative employees under FLSA was amount of District paychecks they would receive before offset for pension payments was applied, not amount they received after their paychecks had been reduced to account for those payments. Cannon v. District of Columbia, 2012 WL 2673097 (2012).

§ 5-723.01. Maximum amount of benefits and contributions.

(a) Benefits and contributions under the provisions of this subchapter shall not be computed with reference to any compensation that exceeds that maximum dollar amount permitted by section 401(a)(17) of the Internal Revenue Code of 1986, as adjusted for increases in the cost-of-living. This provision shall take effect as of October 1, 2002, and shall apply only with respect to an individual who first becomes covered by this subchapter after that date.

(b) Benefits shall not be payable under this subchapter to the extent that they exceed the limitations imposed by section 415 of the Internal Revenue Code of 1986, as adjusted for increases in the cost-of-living.

(Sept. 16, 1916, ch. 433, § 12(n-1), as added Oct. 1, 2002, D.C. Law 14-190, § 3722(a), 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 40(b), 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105, in subsecs. (a) and (b), validated previously made technical corrections.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 5-133.19.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 5-409.01.

References in text. — Section 401(a)(17) of

the Internal Revenue Code of 1986, referred to in par. (1), is classified as 26 U.S.C. § 401(a)(17).

Section 415 of the Internal Revenue Code of 1986, referred to in par. (2), is classified as 26 U.S.C. § 415.

Editor’s notes. — Section 3723 of D.C. Law 14-190 provided: “This subtitle subtitle B of

title XXXVII, §§ 3721 to 3724, of D.C. Law 14-190 shall apply as of January 1, 2002.”

§ 5-723.02. Longevity compensation.

The additional compensation provided for in § 5-544.01, shall be included for purposes of retirement annuity calculations pursuant to this subchapter for those officers and members who complete 25 years of active service prior to retirement.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(n-2), as added Apr. 13, 2005, D.C. Law 15-354, § 13(i), 52 DCR 2638.)

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

§ 5-724. Delegation of functions by Mayor; promulgation of rules and regulations by Mayor.

(a) The Mayor is hereby vested with full power and authority to delegate from time to time to his designated agent or agents any of the functions vested in him by this subchapter.

(b) The Mayor is authorized to promulgate such rules and regulations as the Mayor may deem necessary to carry out the Mayor’s responsibilities under this subchapter.

(Sept. 1, 1916, ch. 433, § 12(o), (p); Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3 redesignated § 12(q), (r) Nov. 17, 1979, 93 Stat. 912, Pub. L. 96-122, § 209(a)(1)(A); Apr. 13, 2005, D.C. Law 15-354, § 13(j), 52 DCR 2638.)

Cross references. — Life, health, and property, protection, regulations, see § 1-303.03.

Merit system, “employee” defined, see § 1-623.01.

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-731, 5-732, 5-733, 5-743, 5-744, 5-745, 5-1304, and 7-2203.

Prior Codifications. — 1981 Ed., § 4-630. 1973 Ed., § 4-535.

Effect of amendments. — D.C. Law 15-354 rewrote subsec. (b) which had read:

“(b) The Mayor is authorized to promulgate such rules and regulations as he may deem necessary to carry out the purposes of this subchapter.”

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Delegation of Authority. — Delegation of Mayor’s Rulemaking Authority Pursuant to the Fire and Police Medical Leave and Limited Duty Amendment Act of 2004 and the Policemen and Firemen’s Retirement and Disability Act to the Chief, Metropolitan Police Department, see Mayor’s Order 2005-100, June 14, 2005, (52 DCR 8166).

Editor’s notes. — Policemen and Firemen’s Retirement and Disability Act: Section 3(r) of

Pub. L. 85-157 provided that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

*Subchapter II. Application of 1916 Provisions.***§ 5-731. Existing relief and rights preserved.**

Nothing in subchapter I of this chapter shall be deemed to reduce the relief or retirement compensation to which any person is entitled on the effective date of such sections and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.

(Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 4.)

Prior Codifications. — 1981 Ed., § 4-631. is prescribed by § 8 of the Act of August 21, 1973 Ed., § 4-536. 1957, 71 Stat. 399, Pub. L. 85-157.

References in text. — The “effective date”

§ 5-732. Appropriations authorized.

There are hereby authorized to be appropriated from revenues of the United States such sums as are necessary to reimburse the District of Columbia, on a monthly basis, for benefit payments made from revenues of the District of Columbia to or for federal employees and to or for the surviving children and spouse of such federal employees under the provisions of subchapter I of this chapter, to the extent that such benefit payments exceed the deductions from the salaries of federal employees for credit to the revenues of the District of Columbia, and for the administrative costs associated with making such benefit payments. For the purpose of this section:

(1) The term “benefit payments” includes relief, retirement compensation, pensions, and annuities and medical, surgical, hospital, and funeral expenses.

(2) The term “federal employees” means and includes such members of the United States Park Police force as are paid from funds of the United States, members of the United States Secret Service Uniformed Division and such members of the United States Secret Service Division as have or may hereafter become entitled to benefits under subchapter I of this chapter.

(Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 6; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 18, 2004, 118 Stat. 1347, Pub. L. 108-335, § 334(a).)

Cross references. — Expenses of government of District, defrayment, annual federal payment, see § 47-3402 et seq.

Section references. — This section is referred to in §§ 5-414, 5-544.01, 5-701, 5-703, 5-704, 5-706, 5-708, 5-709, 5-712, 5-717, 5-718, 5-721, 5-722, 5-723, 5-724, 5-731, 5-733, and 50-2622.

Prior Codifications. — 1981 Ed., § 4-632. 1973 Ed., § 4-537.

Effect of amendments. — Pub. L. 108-335,

in the introductory paragraph, deleted the period at the end of the first sentence and inserted “, and for the administrative costs associated with making such benefit payments.”

Editor’s notes. — Section 334(b) of Pub. L. 108-335, the District of Columbia Appropriations Act, 2005, provided: “The amendment made by subsection (a) shall apply with respect to fiscal year 2005 and each succeeding fiscal year.”

CASE NOTES

In general.

Office of Personnel Management (OPM) merit Systems Protection Board (MSPB)/Federal Circuit remedial scheme provided United States Secret Services (USSS) employees, who alleged they were erroneously placed within Federal Employees' Retirement System (FERS) and

were entitled to elect more favorable coverage under District of Columbia Police and Firefighters Retirement and Disability Act (DCRA), with adequate administrative remedy. *Eisenbeiser v. Chertoff*, 448 F.Supp.2d 106, 2006 U.S. Dist. LEXIS 59942 (2006).

§ 5-733. Eligibility for benefits under federal law.

Notwithstanding any other provision of law, no person entitled to receive any benefit under subchapter I of this chapter on account of death incurred, an injury received, or disease contracted, or an injury or disease aggravated, in the performance of duty shall be entitled, because of the same death, injury, disease, or aggravation, to benefits under subchapter I of Chapter 81 of Title 5, United States Code.

(Aug. 21, 1957, 71 Stat. 400, Pub. L. 85-157, § 7.)

Prior Codifications. — 1981 Ed., § 4-633. 1973 Ed., § 4-538.

References in text. — "Subchapter I of

Chapter 81 of Title 5, United States Code" is codified at 5 U.S.C. § 8101 et seq.

CASE NOTES

ANALYSIS

Collateral source rule.

Federal liability.

In general.

Murray rule.

Collateral source rule.

Where most of money paid by District of Columbia under District of Columbia Disability Act for medical and hospital expenses of injured employees came from district revenues and employee contributions, employee was entitled under the collateral source rule to recover for medical and hospital expenses in his tort suit against United States. 18 U.S.C. § 1346(b), D.C. Code §§ 4-502, 4-524, 4-525, 4-527(1), 4-528, 4-537, 31-721, 43-126, 47-309, 47-310; Reorganization Plan No. 3, 81 Stat. 948. *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

Federal liability.

United States is not liable for claims against District of Columbia. *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

District of Columbia Disability Act did not provide District of Columbia metropolitan motorcycle policeman exclusive method of recovery for injury sustained when he was struck by government bus being driven on government business by employee of United States and

policeman and his wife were not precluded from maintaining suit against United States under Federal Tort Claims Act. D.C. Code §§ 4-525, 4-527(1), 4-538, 18 U.S.C. § 1346(b). *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

In general.

Where Congress has established comprehensive system to compensate injured employees, such scheme should be presumed to be exclusive remedy against government. 5 U.S.C. § 8101(1)(E)(iv); D.C. Code § 4-538. *Anthony v. Norfleet*, 330 F. Supp. 1211, 1971 U.S. Dist. LEXIS 12594 (1971).

Exclusion, of member of metropolitan police or fire department of District of Columbia who was pensioned or pensionable under certain other sections of District of Columbia code, from coverage of Federal Employees' Compensation Act does not preserve common-law tort liability of District of Columbia to firemen and policemen injured on duty but only prescribes different method for computing payment for injured firemen and policemen. 5 U.S.C. §§ 8101 et seq., 8101(1)(E)(iv); D.C. Code §§ 4-421 to 4-535, 4-538. *Anthony v. Norfleet*, 330 F. Supp. 1211, 1971 U.S. Dist. LEXIS 12594 (1971).

District of Columbia police officers and fire fighters were exempted from Federal Employees Compensation Act to prevent double recovery.

eries; there was never an intention to preclude recovery for medical care and compensation. 5 U.S.C. §§ 8101 et seq., 8101(1)(E)(iv); D.C. Code 1973, §§ 4-525, 4-538; D.C. Code 1981, § 4-633. *Brown v. Jefferson*, 451 A.2d 74, 1982 D.C. App. LEXIS 443 (1982).

Murray rule.

"Murray rule" under which tort-feasor who was jointly responsible with employer was not compelled to pay total common-law damages as

common-law recovery of injured employee was reduced by half because of employee's recovery under Federal Employees' Compensation Act was not applicable where employees' compensation was not provided through such Act but by District of Columbia statute applying to pensionable members of police or fire department of District of Columbia. 5 U.S.C. §§ 8101 et seq., 8101(1)(E)(iv); D.C. Code §§ 4-521 to 4-535, 4-538. *Anthony v. Norfleet*, 330 F. Supp. 1211, 1971 U.S. Dist. LEXIS 12594 (1971).

Subchapter III. Miscellaneous Provisions.

§ 5-741. Payment and deposit of moneys.

Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the Policemen and Firemen's Relief Fund, District of Columbia, under § 5-706(a), shall be paid to the Collector of Taxes of the District of Columbia and deposited in the Treasury to the credit of the revenues of said District, except that all moneys required to be deposited with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712.

(June 14, 1935, 49 Stat. 358, ch. 241, § 1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(b)(2).)

Cross references. — District of Columbia police officers and firefighters retirement fund, see § 1-712.

Merit system, application to police officers and firefighters, see § 1-632.03.

Retirement fund for police officers and firefighters, see § 1-903.01.

Section references. — This section is referred to in § 50-2622.

Prior Codifications. — 1981 Ed., § 4-601. 1973 Ed., § 4-502.

CASE NOTES

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Collateral source rule.

Where most of money paid by District of Columbia under District of Columbia Disability

Act for medical and hospital expenses of injured employees came from district revenues and employee contributions, employee was entitled under the collateral source rule to recover for medical and hospital expenses in his tort suit against United States. 18 U.S.C. § 1346(b), D.C. Code §§ 4-502, 4-524, 4-525, 4-527(1), 4-528, 4-537, 31-721, 43-126, 47-309, 47-310; Reorganization Plan No. 3, 81 Stat. 948. *Bradshaw v. United States*, 443 F.2d 759, 1971 U.S. App. LEXIS 11900 (C.A.D.C. 1971).

Compensation scheme.

Compensation scheme of District of Columbia Police and Firefighters Disability Act, is comprehensive, and thus exclusive, where it provides, among other things, pension relief

allowances and retirement compensation increases, payment of medical expenses for active members and for total disability retirees, retirement disability not incurred in performance of duty, and retirement for disability incurred or aggravated in performance of duty. D.C. Code 1981, §§ 4-601 to 4-634. *Lewis v. District of Columbia*, 499 A.2d 911, 1985 D.C. App. LEXIS 527 (1985).

Conflict of laws.

Where first of two consecutive pension statute sections was inconsistent with second section, which had been enacted subsequent to first, second section superseded first section to extent of such inconsistency. D.C. Code 1951, §§ 4-507, 4-508. *Spencer v. Bullock*, 216 F.2d 54, 1954 U.S. App. LEXIS 2925 (C.A.D.C. 1954).

Construction and application.

Police and Firefighters Retirement and Disability Act is remedial legislation which is to be interpreted liberally to achieve its purposes. D.C. Code 1981, § 4-601 et seq. *District of Columbia v. Tarlosky*, 675 A.2d 77, 1996 D.C. App. LEXIS 75 (1996).

Federal claims.

A member of metropolitan police of District of Columbia who was injured in collision with truck driven by employee of United States was not precluded from recovering for injuries from United States under Federal Tort Claims Act because benefits were paid to him from police and firemen's relief fund, a fund authorized by Congress and to which moneys from federal sources were contributed. 18 U.S.C. §§ 1346, 2671 et seq., D.C. Code 1940, §§ 4-501 et seq., 4-503, 4-516, 47-109; Act June 29, 1922, D.C. Code 1940, § 47-134, note; U.S. Const. Art. 1, § 8, Cl. 17. *Wham v. U.S.*, 180 F.2d 38, 1950 U.S. App. LEXIS 2361 (C.A.D.C. 1950).

A member of metropolitan police of District of Columbia, who was injured in collision with truck driven by employee of United States, was not required to elect whether to receive benefits from police and firemen's relief fund or bring action to recover for his injuries from United States under Federal Tort Claims Act. 18 U.S.C. §§ 1346, 2671 et seq.; D.C. Code 1940, §§ 4-501 et seq., 4-503, 4-516. *Wham v. U.S.*, 180 F.2d 38, 1950 U.S. App. LEXIS 2361 (C.A.D.C. 1950).

Where member of metropolitan police of District of Columbia, who was injured in collision with truck driven by employee of United States, lost no earnings, while injured and expenses of hospitalization and medical treatment were paid from police and firemen's fund, policeman could not recover for injuries from United States under Federal Tort Claims Act. 18 U.S.C. § 2671 et seq.; D.C. Code 1940, §§ 4-501

et seq., 4-503, 4-516. *Wham v. U.S.*, 81 F.Supp. 126, 1948 U.S. Dist. LEXIS 1835 (D.D.C.1948).

In general.

Police and fire fighters in District of Columbia who are temporarily injured or permanently disabled while performing their duties are provided compensation under scheme set forth in Police and Firefighters Retirement and Disability Act. D.C. Code 1981, § 4-601 et seq. *Ray v. District of Columbia*, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Police and Firefighters Retirement and Disability Act is exclusive remedy for both injury suffered in performance of duty and those legitimate consequences flowing from compensable injury. D.C. Code 1981, § 4-601 et seq. *Ray v. District of Columbia*, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Income tax.

Where Board of Commissioners of District of Columbia retired fireman over age of 64 years and granted him pension under provision of statute providing that firemen may be retired with compensation after having reached age of 60 years, and prior to such time it appeared that fireman had suffered physical disability in line of duty, but there had been no determination by Commissioners of extent of disability as a basis for fixing compensation or retirement pay, it was necessary to treat fireman for income tax purposes as having been retired for age, and retirement compensation received by him was not excludable from his gross income for income tax purposes under provision of the Internal Revenue Code exempting amounts received under workmen's compensation acts, as compensation for personal injuries or sickness determining income. 26 U.S.C. § 104; D.C. Code 1940, §§ 4-501 to 4-517, 4-507. *Simms v. C.I.R.*, 196 F.2d 238, 1952 U.S. App. LEXIS 4170 (C.A.D.C. 1952).

Monies received by members of the police or fire departments of the District of Columbia while in voluntary or involuntary retirement after a specified number of years of service is subject to income tax, with certain exceptions, as amounts received as an "annuity". D.C. Code 1940, §§ 4-501, 4-506 to 4-508; 26 U.S.C. §§ 61, 72, 104, 403. *Frye v. U.S.*, 72 F.Supp. 405, 1947 U.S. Dist. LEXIS 2523 (D.D.C.1947).

Monies received by members of the police or fire departments of the District of Columbia, who were retired for disability, being in the nature of compensation for personal injuries under a workmen's compensation act, was not subject to federal income tax. D.C. Code 1940, § 4-507; 26 U.S.C. §§ 61, 72, 104, 403. *Frye v. U.S.*, 72 F.Supp. 405, 1947 U.S. Dist. LEXIS 2523 (D.D.C.1947).

Purpose.

The act creating a policemen's and firemen's relief fund in the District of Columbia discloses

that it has a dual purpose in the creation and operation of a system of compensation of policemen and firemen who have been disabled through injury received or disease contracted in line of duty in the nature of a workmen's compensation act and a system for voluntary and for involuntary retirement. D.C. Code 1940, § 4-501 et seq.; § 31-701; Civil Service Retirement Act of 1920, § 1 as amended 5 U.S.C. § 693; Workmen's Compensation Act, § 1, 5 U.S.C. § 751; 5 U.S.C. § 794. *Frye v. U.S.*, 72 F.Supp. 405, 1947 U.S. Dist. LEXIS 2523 (D.D.C.1947).

Sovereign immunity.

Failure of District of Columbia to increase Secret Service retirement benefits administered by the District but funded by the federal government was not final agency action waiving United States' sovereign immunity; despite contention that United States made all substantive decisions about pensions and that District acted as mere conduit for pension monies, nothing limited District to passive role, no federal agency offered any statutory interpretation or took any reviewable action, and District of Columbia Police and Firefighters Retirement and Disability Act did not expressly require United States to take any action prior to reimbursing District. 5 U.S.C. § 702; D.C. Code 1981, § 4-601 et seq. *Floyd v. District of Columbia*, 129 F.3d 152, 1997 U.S. App. LEXIS 30462 (C.A.D.C. 1997).

Subsequent injuries.

Since fire fighter's work-related back injury was covered by Police and Firefighters Retirement and Disability Act, which afforded exclusive remedy, subsequent injuries resulting from medical services provided for initial injury were sufficiently connected so that fire fighter's remedy for later injuries was exclusively under Act. D.C. Code 1981, § 4-601 et seq. *Ray v. District of Columbia*, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Third-party actions.

District of Columbia Police and Firefighters Retirement and Disability Act (PFRDA) was exclusive remedy against District of Columbia for injured firefighters and estates of firefighters; intentional tort claims were precluded under the Act. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist. LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

To extent injured firefighters and estates of deceased firefighters asserted intentional tort claims against fire department officials, in their personal capacities, those claims were not precluded by the District of Columbia Police and Firefighters Retirement and Disability Act

(PFRDA); PFRDA did not preclude claims for intentional acts by co-employees, although PFRDA was exclusive remedy for claims against District of Columbia. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist. LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

Coemployee was not entitled to file a third-party complaint against District of Columbia and another, in battery action for coemployee's shooting of fellow police officer while they were on duty; coemployee filed the motion for leave 22 months after the initial complaint was filed and almost five months after his new counsel entered the case, without an adequate explanation for the delay, and third-party complaint would likely not be cognizable, with respect to the District of Columbia, because of Police and Firefighters Retirement and Disability Act. D.C. Code 1981, § 4-601 et seq. *Mayberry v. Dukes*, 742 A.2d 448, 1999 D.C. App. LEXIS 278 (1999).

District of Columbia Police and Firefighters Disability Act was exclusive remedy against District for uniformed personnel, and therefore, Act excluded third-party action against District by driver involved in collision with police vehicle, where collision had been basis of police officer's claim under Act. D.C. Code 1981, §§ 4-601 to 4-634. *Lewis v. District of Columbia*, 499 A.2d 911, 1985 D.C. App. LEXIS 527 (1985).

Tort liability.

Police and Firefighters Retirement and Disability Act was not the exclusive remedy for employees subject to the Act that were injured by an intentional tort of a coemployee, and thus, police officer's battery claim against coemployee, who shot police officer while they were on duty, was not barred by the Act. D.C. Code 1981, § 4-601 et seq. *Mayberry v. Dukes*, 742 A.2d 448, 1999 D.C. App. LEXIS 278 (1999).

By providing medical services to fire fighter for work-related back injury, employer was not operating in dual capacity so that employer would become liable in tort to fire fighter since employer provided medical services exclusively to police and fire fighters in order to comply with statutory mandate. D.C. Code 1981, § 4-601 et seq. *Ray v. District of Columbia*, 535 A.2d 868, 1987 D.C. App. LEXIS 524 (1987).

Condition in automobile policy that "any amount payable" under the terms of the uninsured motorist coverage would be reduced by amounts payable under workmen's compensation referred to insurer's promise "to pay all sums" which insured was legally entitled to recover from tort-feasor, and not to policy's liability limits, or was at least ambiguous in such respect, and thus, where alleged compen-

sation payments in excess of \$15,000 did not compensate for pain and suffering and \$57,350 judgment against tort-feasor provided damages of \$25,000 for pain and suffering, insured was

entitled to recover from insurer up to \$15,000 policy limits. D.C. Code § 4-501 et seq. *American Ins. Co. v. Tutt*, 314 A.2d 481, 1974 D.C. App. LEXIS 347 (1974).

§ 5-742. Credit for active service in military or naval forces.

In determining eligibility for the amount of benefits from the Policemen and Firemen's Relief Fund, District of Columbia, or the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712), each member of the Metropolitan Police Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, the Fire Department of the District of Columbia, and each member of the United States Secret Service who has actively performed duties other than clerical for 10 years or more directly related to the protection of the President, who shall have left active employment in any such Department, force, or Service to perform active service in the military or naval forces of the United States, shall be credited with all periods of honorable active military or naval service performed on or after September 16, 1940, and prior to the termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress.

(July 21, 1947, 61 Stat. 398, ch. 272; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(b)(3).)

Prior Codifications. — 1981 Ed., § 4-602. 1973 Ed., § 4-504a.

Editor's notes. — Coverage Under Federal Employees' Retirement Act: Officers and members of the United States Park Police, United States Secret Service Uniformed Division, and

United States Secret Service Division hired on or after January 1, 1984, are covered by the Federal Employees' Retirement System Act, not the District of Columbia Retirement System, unless exempt from coverage of such Act. See 5 U.S.C. §§ 8401(17)(B) and 8402.

§ 5-743. Board to determine amount of pension relief.

The District of Columbia Retirement Board is hereby empowered to determine and fix the amount of the pension relief allowance heretofore and hereafter granted to any person under and in accordance with the provisions of subchapter I of this chapter.

(July 1, 1930, 46 Stat. 841, ch. 783, § 6; Apr. 13, 2005, D.C. Law 15-354, § 14, 52 DCR 2638.)

Section references. — This section is referred to in §§ 5-745 and 50-2622.

Prior Codifications. — 1981 Ed., § 4-603. 1973 Ed., § 4-505.

Effect of amendments. — D.C. Law 15-354 substituted "District of Columbia Retirement Board" for "Mayor".

Legislative history of Law 15-354. — For Law 15-354, see notes following § 5-101.04.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-744. Equalization of pensions of widows and orphans granted prior to October 1, 1949.

All widows and children of deceased members of the Police Department or of the Fire Department of the District of Columbia receiving relief under the provisions of subchapter I of this chapter shall be entitled to receive relief to the same extent and in the same manner as is provided by § 5-716; provided, that no relief shall be increased or allowed under the authority of this section for any period prior to October 1, 1949; provided further, that any child or children who had attained the age of 16 years and whose benefits were terminated shall be entitled to receive relief as provided by § 5-716 until the attainment of 18 years of age.

(Aug. 4, 1949, 63 Stat. 566, ch. 394, § 3.)

Section references. — This section is referred to in § 5-561.02.

Prior Codifications. — 1981 Ed., § 4-604.
1973 Ed., § 4-507a.

Editor's notes. — Section 3(b) of Pub. L. 111-282 provided:

“(b) IMPACT ON BENEFITS UNDER THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS’ RETIREMENT AND DISABILITY SYSTEM. —

“(1) SALARY INCREASES FOR PURPOSES OF CERTAIN PENSIONS AND ALLOWANCES.—For purposes of section 3 of the Act entitled “An Act to provide increased pensions for widows and children of deceased members of the Police Department and the Fire Department of the District of Columbia”, approved August 4, 1949 (sec. 5-744, D.C. Official Code) and section 301 of the District of Columbia Police and Firemen’s Salary Act of 1953 (sec. 5-745, D.C. Official Code)—

“(A) the conversion of positions and members of the United States Secret Service Uniformed Division to appropriate ranks in the salary schedule set forth in this Act and the amendments made by this Act shall not be treated as an increase in the salary of individuals who are members of the United States Secret Service

Uniformed Division on the date of the enactment of this Act; and

“(B) any adjustment of rates of basic pay of those positions and individuals in accordance with this Act and the amendments made by this Act which is made after such conversion shall be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act.”

“(2) TREATMENT OF RETIREMENT BENEFITS AND PENSIONS OF CURRENT AND FORMER MEMBERS.—Except as otherwise provided in this Act, nothing in this Act shall affect retirement benefits and pensions of current members and former members who have retired under the District of Columbia Police and Firefighters’ Retirement and Disability System.”

Section 4(a) of Pub. L. 111-282 provided:

“(a) IN GENERAL.—To the extent that any provision of any law codified in the District of Columbia Official Code that authorizes an entitlement to pay or hours of work for current members of the United States Secret Service Uniformed Division is not expressly revoked by this Act, such provision shall not apply to such members after the effective date of this Act.”

CASE NOTES

ANALYSIS

Construction and application.

In general.

Military leave.

Pleadings.

Review.

Construction and application.

The portion of the code section providing for benefits to widow and children of a deceased member of District of Columbia metropolitan

police force is not required to be read in terms with preceding portion providing for retirement for disability sustained in line of duty so as to require a construction that the death must have been the result of injury or disease sustained or contracted in line of duty in order for benefits to be payable. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

The code section providing that in case of death of a member of the District of Columbia metropolitan police force, widow shall be entitled to receive relief from policemen and firemen's relief fund is remedial and entitled to liberality of construction. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

In general.

Where commissioners of District of Columbia admitted the death of member of metropolitan police force, in exercise of such discretion as they had in determining whether widow and minor children of decedent were entitled to relief from policemen and firemen's relief fund, there was nothing remaining to be done except determination of amount to which widow was entitled. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Widow of deceased member of metropolitan police force of District of Columbia, in view of broad discretion granted commissioners, was not entitled to a money judgment against policemen and firemen's relief fund, following denial of pension by commissioners. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Military leave.

"Leave of absence without pay", given member of metropolitan police force of District of Columbia when he entered marine corps, temporarily excused him from performing acts of duty as a policeman, was in the nature of a furlough and did not terminate membership in police force or constitute a retirement therefrom so as to preclude benefit to his widow and minor children from policemen and firemen's relief fund following his death in line of duty in marine corps. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

son v. Young, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Where member of metropolitan police force of District of Columbia while on military leave, without pay, died in line of duty while serving as a marine corps officer, widow and minor children were within class of beneficiaries designated by statute as entitled to relief from policemen and firemen's relief fund notwithstanding that death did not result from injury or disease contracted in line of duty as a policeman. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Where member of metropolitan police force, while on military leave and serving as an officer in the marine corps, died, application of widow for herself and minor children for relief from policemen and firemen's relief fund was properly made by a person legally within class designated by statute and entitled as a consequence to a hearing on the merits by commissioners and claim could not summarily be rejected. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Pleadings.

Where answer of commissioners of District of Columbia to action by widow of member of metropolitan police force who had died while in military service for mandatory injunction to place widow and minor children on pension roll of police department raised no material issue of fact, widow was entitled to summary judgment, but amount of pension was a matter of discretion for commissioners subject to possible review for abuse thereof. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

Review.

The broad discretion given District of Columbia commissioners with respect to granting relief to widow and minor children of deceased member of metropolitan police force, which precludes review of commissioners' action properly taken, does not preclude judicial review of arbitrary denial without hearing on the merits of widow's application for relief. D.C. Code 1940, § 4-507. *Thompson v. Young*, 63 F.Supp. 890, 1945 U.S. Dist. LEXIS 1797 (D.D.C.1945).

§ 5-745. Pension relief allowance or retirement compensation increase.

(a) Notwithstanding § 5-743, each individual heretofore or hereafter retired from active service and entitled to receive a pension relief allowance or retirement compensation under the provisions of subchapter I of this chapter shall be entitled to receive, without making application therefor, with respect to each increase in salary granted by this act, or hereafter granted by law to

which such individual would be entitled if he were in active service, an increase in his pension relief allowance or retirement compensation. Except as otherwise provided in this section, such increase shall be in an amount which bears the same ratio to such increase in salary as the amount of each such individual's pension relief allowance or retirement compensation in effect on the day next preceding such salary increase bore to the salary to which he would have been entitled had he been in active service on the day next preceding such salary increase.

(b) The increase prescribed by subsection (a) of this section in the pension relief allowance or retirement compensation received by an individual retired from active service before the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 under subchapter I of this chapter as a result of the increase in salary provided by the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall not be less than 17% of such allowance or compensation.

(c) Each individual retired from active service and entitled to receive a pension relief allowance or retirement compensation under subchapter I of this chapter shall be entitled to receive, without making application therefor, with respect to each increase in salary, granted by any law which takes effect after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, to which he would be entitled if he were in active service, an increase in his pension relief allowance or retirement compensation computed as follows: His pension relief allowance or retirement compensation shall be increased by an amount equal to the product of such allowance or compensation and the per centum increase made by such law in the scheduled rate of compensation to which he would be entitled if he were in active service on the effective date of such increase in salary.

(d) Each increase in pension relief allowance or retirement compensation made under this section because of an increase in salary shall take effect as of the 1st day of the 1st month following the effective date of such increase in salary.

(e) This section shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who retire after the effective date of this subsection.

(June 20, 1953, 67 Stat. 75, ch. 146, title III, § 301; Aug. 29, 1972, 86 Stat. 640, Pub. L. 92-410, title I, § 114; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 209(c).)

Section references. — This section is referred to in §§ 5-544.01 and 5-561.02.

Prior Codifications. — 1981 Ed., § 4-605. 1973 Ed., § 4-518.

Emergency legislation. — For temporary amendment of section, see § 513 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217).

Legislative history of Law 10-135. — Law 10-135, the "Full Funding of Pension Liability Retirement Reform Amendment Act of 1994," was introduced in Council and assigned Bill

No. 10-515, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-239 and transmitted to both Houses of Congress for its review.

References in text. — "This act," referred to in the first sentence of subsection (a) of this section, means the Act of June 20, 1953, 67 Stat. 75, ch. 146.

Editor's notes. — Section 9 of D.C. Law

4-78 provided that for the purposes of implementing the automatic equalization provisions of subsection (c) of this section, the "early reporting time stipends" paid to active members of the Metropolitan Police Department pursuant to the negotiated agreement between the International Brotherhood of Police Officers and the District of Columbia government, signed by the Mayor on July 15, 1981, and submitted to the Council on July 29, 1981, shall be considered to be a salary increase within the scope of the equalization clause, and shall be included for the purpose of computing increases in retirement benefits pursuant to the equalization clause for those retired members who would have received such early reporting time stipend payments had they been on active service when such payments are made.

Full Funding of Pension Liability Reform Amendment Act of 1994: Section 303(b) of D.C. Law 10-135 amends § 5-745(e) by striking the phrase "who retire after the effective date of this act."

Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title 1 §§ 101(b)(1) and (2), and titles II and III, shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters' Retirement Fund, the Teachers' Retirement Fund and the Judges' Retirement Fund on and after October 1, 1995.

Section 501 of D.C. Law 10-135 provided that the act shall take effect on the later of: (1) completion of the 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or (2) enactment by Congress of titles II and III, of this act and of an amendment to D.C. Code § 11-1563 which amends the first sentence in subsection (a) by inserting after "per centum" the following: "(or, with respect to each pay period which begins on or after October 1, 1995, 4 ½ per centum)" and an amendment to D.C. Code § 11-1564 (d)(1) which inserts after "United States Code," the following: "with respect to services performed before October 1, 1995, and equal to 4 ½ per centum of such salary, pay, or compensation

with respect to services performed on or after October 1, 1995."

Section 3(b) of Pub. L. 111-282 provided:

"(b) IMPACT ON BENEFITS UNDER THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT AND DISABILITY SYSTEM. —

"(1) SALARY INCREASES FOR PURPOSES OF CERTAIN PENSIONS AND ALLOWANCES.—For purposes of section 3 of the Act entitled "An Act to provide increased pensions for widows and children of deceased members of the Police Department and the Fire Department of the District of Columbia", approved August 4, 1949 (sec. 5-744, D.C. Official Code) and section 301 of the District of Columbia Police and Firemen's Salary Act of 1953 (sec. 5-745, D.C. Official Code)—

"(A) the conversion of positions and members of the United States Secret Service Uniformed Division to appropriate ranks in the salary schedule set forth in this Act and the amendments made by this Act shall not be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act; and

"(B) any adjustment of rates of basic pay of those positions and individuals in accordance with this Act and the amendments made by this Act which is made after such conversion shall be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act."

"(2) TREATMENT OF RETIREMENT BENEFITS AND PENSIONS OF CURRENT AND FORMER MEMBERS.—Except as otherwise provided in this Act, nothing in this Act shall affect retirement benefits and pensions of current members and former members who have retired under the District of Columbia Police and Firefighters' Retirement and Disability System."

Section 4(a) of Pub. L. 111-282 provided:

"(a) IN GENERAL.—To the extent that any provision of any law codified in the District of Columbia Official Code that authorizes an entitlement to pay or hours of work for current members of the United States Secret Service Uniformed Division is not expressly revoked by this Act, such provision shall not apply to such members after the effective date of this Act."

CASE NOTES

ANALYSIS

Evidence.

In general.

Increase in salary.

Jurisdiction.

Scheduled rate of compensation.

Evidence.

Substantial evidence supported decision of Police and Firefighters' Retirement and Relief Board that claimant's disability, after suffering

apparent heart attack while on duty, was not caused by firefighting duties, such that he would be entitled to more generous retirement benefits available to disabled fire fighters whose disability was incurred in line of duty, but was result of his bad health habits, including his gross overeating, his failure to control his weight, his smoking, and his failure to take his hypertension medication. D.C. Code 1981, §§ 4-605(a), 4-616. *Spielman v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 624 A.2d 932, 1993 D.C. App. LEXIS 120 (1993).

In general.

Equalization provision of the District of Columbia Police and Firefighters Retirement and Disability Act is remedial legislation which is to be interpreted liberally to achieve its purposes. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

Initial treatment of fire fighter, who suffered apparent heart attack while on duty, for purposes of sick leave, salary, and payment of medical services did not preclude Police and Firefighters' Retirement and Relief Board from contending that fire fighter's condition was not incurred in line of duty, so that he was not entitled to generous retirement benefits available to disabled fire fighters whose disability was incurred in the line of duty; at prior hearing in which fire fighter was determined to be totally disabled, Board did not reach question whether disability was incurred in line of duty. D.C. Code 1981, §§ 4-605(a), 4-616. *Spielman v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 624 A.2d 932, 1993 D.C. App. LEXIS 120 (1993).

Increase in salary.

Treasury Department's decision to adopt national weighted average method to calculate increases in retirement benefits paid to retired Secret Service criminal investigators under District of Columbia Police and Firefighters Retirement and Disability Act was not entitled to Chevron deference in action by retired investigators challenging decision; District of Columbia, not Treasury Department, was charged with determining pension allowances, promulgating rules, and otherwise implementing Act, Treasury Department's decision was not product of formal notice-and-comment rulemaking, and there were no other indications that Congress intended that Chevron deference apply. *Brown v. Summers*, 201 F.Supp.2d 60, 2002 U.S. Dist. LEXIS 5807 (2002), reversed by 327 F.3d 1198, 356 U.S. App. D.C. 61, 2003 U.S. App. LEXIS 8463 (2003).

Treasury Department's decision to adopt national weighted average method to calculate increases in retirement benefits paid to retired Secret Service criminal investigators under

District of Columbia Police and Firefighters Retirement and Disability Act conflicted with plain terms of Act, which required individualized calculations based on factors individual to each retiree. *Brown v. Summers*, 201 F.Supp.2d 60, 2002 U.S. Dist. LEXIS 5807 (2002), reversed by 327 F.3d 1198, 356 U.S. App. D.C. 61, 2003 U.S. App. LEXIS 8463 (2003).

Letter sent by chief financial officer of United States Department of Treasury to interim chief financial officer of District of Columbia stating Treasury Department's position that 25% increase in basic pay under Law Enforcement Availability Pay Act (LEAP) should not be included in calculations for Secret Service criminal investigators' retirement benefits under equalization provision of District of Columbia Police and Firefighters Retirement and Disability Act (DCRA) afforded retired investigators right to seek judicial review of government's position under Administrative Procedure Act (APA). 5 U.S.C. §§ 702, 5545a; D.C. Code 1981, § 4-605(c). *Floyd v. Rubin*, 46 F.Supp.2d 8, 1999 U.S. Dist. LEXIS 4734 (1999).

Availability pay of 25% of basic pay provided to federal criminal investigators by Law Enforcement Availability Pay Act (LEAP) was "increase in salary" for purposes of District of Columbia Police and Firefighters Retirement and Disability Act (DCRA) equalization provision, which stated that each retiree was entitled to receive increase in retirement compensation for each increase in salary he would have been eligible for, and, thus, availability pay should have been included in calculation of retirement benefits for Secret Service criminal investigators who retired before effective date of LEAP. 5 U.S.C. § 5545a; D.C. Code 1981, § 4-605(c). *Floyd v. Rubin*, 46 F.Supp.2d 8, 1999 U.S. Dist. LEXIS 4734 (1999).

Twenty-five percent increase in salary granted active duty investigators by Law Enforcement Availability Pay (LEAP) Act constituted an "increase in salary" for purposes of equalization clause of the District of Columbia Police and Firefighters Retirement Disability Act requiring retirees to receive commensurate percentage increases in their retirement pay for each "increase in salary," granted by law, to which they would be entitled if they were in active service; LEAP increased basic pay by 25% and to hold that increase in basic pay was not an increase in basic salary would defy plain language of the statute. 5 U.S.C. § 5545a; D.C. Code 1981, § 4-605(c). *Floyd v. District of Columbia*, 941 F. Supp. 164, 1996 U.S. Dist. LEXIS 14113 (1996), vacated by, remanded by 129 F.3d 152, 327 U.S. App. D.C. 69, 1997 U.S. App. LEXIS 30462 (1997).

Four percent locality pay increase to active federal law enforcement officials working in Washington D.C., under Federal Law Enforcement Pay Reform Act (FLEPRA) incorporated

as Title IV of Federal Employees Pay Comparability Act (FEPCA), was an "increase in salary granted by any law" for purposes of District of Columbia Police and Firefighters Retirement and Disability Act equalization provision stating that retirees are to receive commensurate percentage increases in their retirement compensation for each "increase in salary granted by any law" to which retirees would be entitled if they were in active service. 5 U.S.C. § 5305; D.C. Code 1981, § 4-605(c). *Lanier v. District of Columbia*, 871 F. Supp. 20, 1994 U.S. Dist. LEXIS 18258 (1994).

Four percent locality pay increase to active federal law enforcement officials working in Washington D.C., under Federal Law Enforcement Pay Reform Act (FLEPRA) incorporated as Title IV of Federal Employees Pay Comparability Act (FEPCA), served to increase basic pay and, as such, was increase in the "scheduled rate of compensation" within meaning of the equalization provision of the District of Columbia Police and Firefighters Retirement and Disability Act stating that retirees are to receive commensurate percentage increases in their retirement compensation for each increase in salary granted by law to which they would be entitled if they were in active service and stating that retirement compensation shall be increased by an amount equal to the product of such compensation and the per centum increase made by such law in the "scheduled rate of compensation" to which retiree would be entitled if he were in active service. 5 U.S.C. § 5305; D.C. Code 1981, § 4-605(c). *Lanier v. District of Columbia*, 871 F. Supp. 20, 1994 U.S. Dist. LEXIS 18258 (1994).

Pursuant to equalization provision of District of Columbia Police and Firefighters Retirement and Disability Act, retirement compensation of retired members of United States Secret Service Uniformed Division, who were covered by Act, would be increased to reflect four percent locality pay increase given to active members of Secret Service performing duty in Washington D.C. under Federal Law Enforcement Pay Reform Act (FLEPRA) incorporated as Title IV of Federal Employees Pay Comparability Act (FEPCA). 5 U.S.C. § 5305; D.C. Code 1981, § 4-605(c). *Lanier v. District of Columbia*, 871 F. Supp. 20, 1994 U.S. Dist. LEXIS 18258 (1994).

The 5% base retention differential (BRD) which former police officers sought pursuant to equalization provision of the District of Columbia Police and Firefighters Retirement and Disability Act was a "salary increase" within the meaning of the Act. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

Former police officers who retired on account of disability before completing 20 years of active service were not entitled to 5% base reten-

tion differential (BRD) pursuant to equalization provision of the Police and Firefighters Retirement and Disability Act, which, by explicit and unambiguous terms of compensation settlement resolution negotiated between police department and police union and approved by Council of District of Columbia was available only to retirees who completed 20 years of service. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

Legislatively approved 4.2% increase in salaries of active members of police department, denominated retention allowance, entitled retired members of police department to corresponding 4.2% increase in retirement payments pursuant to equalization provision of the Police and Firefighters Retirement and Disability Act. D.C. Code 1981, § 4-605(c). *District of Columbia v. Tarlosky*, 675 A.2d 77, 1996 D.C. App. LEXIS 75 (1996).

Jurisdiction.

Federal court had federal question jurisdiction over action brought by retired employees of the United States Secret Service whose retirement benefits were governed by the District of Columbia Police and Firefighters Retirement Disability Act and who alleged that they were entitled to 25% increase in their annuity payments to correspond to 25% increase in salary which active duty investigators were granted by Law Enforcement Availability Pay (LEAP) Act based on the "equalization clause" of the District Retirement Act; it was necessary to construe federal LEAP statute in order to define employees' rights under the "equalization clause" and sovereign immunity was waived by Administrative Procedure Act (APA). 5 U.S.C. §§ 702, 5545a; 18 U.S.C. § 1331; D.C. Code 1981, § 4-605(c). *Floyd v. District of Columbia*, 941 F. Supp. 164, 1996 U.S. Dist. LEXIS 14113 (1996), vacated by, remanded by 129 F.3d 152, 327 U.S. App. D.C. 69, 1997 U.S. App. LEXIS 30462 (1997).

Scheduled rate of compensation.

Term "scheduled rate of compensation" is meant to be merely instructive as to how to apply equalization provision and is not meant to limit in any regard coverage of equalization provision of District of Columbia Police and Firefighters Retirement and Disability Act stating that retirees are to receive commensurate percentage increases in their retirement compensation for each increase in salary granted by law to which they would be entitled if they were in active service and stating that retirement compensation shall be increased by an amount equal to the product of such compensation and the per centum increase made by such law in the "scheduled rate of compensation" to which retiree would be entitled if he were in active service. D.C. Code 1981, § 4-605(c).

Lanier v. District of Columbia, 871 F. Supp. 20, 1994 U.S. Dist. LEXIS 18258 (1994).

§ 5-746. Computation of pension of certain retired officers.

In computing the pension relief allowance or retirement compensation of any such individual retired before July 1, 1953, as Major and Superintendent of Police, Assistant Superintendent of Police, Chief Engineer of the Fire Department, Deputy Chief Engineer of the Fire Department, or Battalion Chief Engineer of the Fire Department of the District of Columbia, such person shall, for the purposes of this act, be deemed to have retired as Chief of Police, Deputy Chief of Police, Fire Chief, Deputy Fire Chief, or Battalion Fire Chief, respectively.

(June 20, 1953, 67 Stat. 75, ch. 143, title III, § 302.)

Prior Codifications. — 1981 Ed., § 4-606. 1973 Ed., § 4-519.

in this section, means the Act of June 20, 1953, 67 Stat. 75, ch. 143.

References in text. — “This act,” referred to

§ 5-747. Rights and relief of widows and children of deceased former members.

(a) Each widow or child who, on or after September 1, 1962, was receiving or is now receiving or shall hereafter be entitled to receive relief or annuity by reason of service in the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, of a deceased former officer or member who died in the service of any such organization prior to October 1, 1956, or who retired prior to such effective date, shall be entitled to benefits computed in accordance with the provisions of § 5-716.

(b) Nothing in this section shall be deemed to reduce the relief or retirement compensation any person receives, or is entitled to receive, on August 24, 1962.

(Aug. 24, 1962, 76 Stat. 402, Pub. L. 87-601, §§ 1, 2; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in § 50-2622.

Prior Codifications. — 1981 Ed., § 4-634. 1973 Ed., § 4-539.

Emergency legislation. — For temporary establishment of a District of Columbia Police Officers' and Firefighters' Defined Benefit Pension Program, see title I, § 101-509 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

For temporary addition of section, see title III, § 103 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program

Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment

Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

CASE NOTES

In general.

To extent injured firefighters and estates of deceased firefighters asserted intentional tort claims against fire department officials, in their personal capacities, those claims were not precluded by the District of Columbia Police and Firefighters Retirement and Disability Act (PFRDA); PFRDA did not preclude claims for

intentional acts by co-employees, although PFRDA was exclusive remedy for claims against District of Columbia. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist. LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

Subchapter IV. Officer Redeployment.

§ 5-761. Retired police officer redeployment.

(a) Except for a disability annuitant, a police officer retired from the Metropolitan Police Department shall be eligible for rehire at the discretion of the Chief of the Metropolitan Police Department as a fully sworn temporary full-time or temporary part-time police officer without jeopardy to the retirement benefits of the police officer.

(b) A retired police officer who is rehired under this section shall be vested with full police powers, including, but not limited to, the authority to carry a firearm.

(c) Service under this section shall not count as creditable service for the purposes of § 5-704.

(d) A retired police officer who is rehired under this section shall be paid a salary of no more than that equal to the salary paid a Class 1, Step 5 Officer and shall not be eligible for longevity pay.

(e) Notwithstanding subsection (d) of this section, a rehired annuitant shall not be required to refund any salary paid prior to January 5, 1993.

(f) No retired police officer who is rehired under this section shall be detailed to any agency of the District of Columbia government other than the Metropolitan Police Department.

(g) The provisions of this section shall apply to any police officer hired after September 29, 1992.

(Sept. 29, 1992, D.C. Law 9-163, § 2, 39 DCR 5705; Sept. 30, 1993, D.C. Law 10-17, § 2, 40 DCR 5453; Sept. 22, 1994, D.C. Law 10-170, § 2, 41 DCR 5147; Apr. 20, 1999, D.C. Law 12-253, § 2(a), 46 DCR 1274.)

Section references. — This section is referred to in § 5-704.

Prior Codifications. — 1981 Ed., § 4-618.1.

1973 Ed., § 4-635.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Retired Police Officer Redeployment Temporary Amendment Act of 1989 (D.C. Law

8-3, May 23, 1989, law notification 36 DCR 4153).

For temporary (225 day) amendment of section, see § 2 of Retired Police Officer Annuitant Salary and Deployment Clarification Temporary Amendment Act of 1992 (D.C. Law 9-265, March 31, 1993, law notification 39 DCR 2418).

For temporary (225 day) amendment of section, see § 3 of Juvenile Curfew and Retired

Police Officer Redeployment Temporary Amendment Act of 1997 (D.C. Law 12-45, February 26, 1998, law notification 45 DCR 1506).

For temporary (225 day) amendment of section, see § 2(b) of Retired Police Officer Redeployment Temporary Amendment Act of 1998 (D.C. Law 12-204, March 26, 1999, law notification 46 DCR 3430).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Retired Police Officer Redeployment Temporary Amendment Act of 1992 (D.C. Law 9-132, July 22, 1992, law notification 39 DCR 5813).

For temporary (225 day) addition of section, see § 2 of Retired Police Officer Public Schools Security Personnel Deployment Temporary Amendment Act of 1993 (D.C. Law 10-5, July 31, 1993, law notification 40 DCR 5629).

Emergency legislation. — For temporary addition of section, see § 2 of the Retired Police Officer Redeployment Emergency Amendment Act of 1992 (D.C. Act 9-201, April 24, 1992, 39 DCR 3215).

For temporary amendment of section, see § 2 of the Rehired Police Officer Annuity Salary and Deployment Clarification Emergency Amendment Act of 1992 (D.C. Act 9-391, January 5, 1993, 40 DCR 1148). Section 3 of the act provided that its provisions shall be retroactive to the effective date of the Retired Police Officer Redeployment Amendment Act of 1992, effective September 29, 1992 (D.C. Law 9-163; 39 DCR 5705).

For temporary eligibility of police officers retired from the Metropolitan Police Force to be rehired at the discretion of the Superintendent of the D.C. Public Schools as D.C. public school security personnel without jeopardy to their retirement benefits, see § 2 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

Legislative history of Law 9-163. — Law 9-163, the “Retired Police Officer Redeployment Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-498, which was referred to the Committee on Government Operations and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-258 and transmitted to both Houses of Congress for its review. D.C. Law 9-163 became effective on September 29, 1992.

Legislative history of Law 10-17. — Law 10-17, the “Rehired Police Annuity Salary and Deployment Clarification Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-74, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 1,

1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-49 and transmitted to both Houses of Congress for its review. D.C. Law 10-17 became effective on September 30, 1993.

Legislative history of Law 10-170. — Law 10-170, the “Retired Police Officer Redeployment Salary Limit Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-471, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-290 and transmitted to both Houses of Congress for its review. D.C. Law 10-170 became effective on September 22, 1994.

Legislative history of Law 12-253. — Law 12-253, the “Retired Police Officer Redeployment Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-239, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998 and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-601 and transmitted to both Houses of Congress for its review. D.C. Law 12-253 became effective on April 20, 1999.

Effective date. — Section 3 of D.C. Law 10-17 provided that the provisions of the act shall be retroactive to the effective Dates of the Retired Police Officer Redeployment Amendment Act of 1992, effective September 29, 1992 (D.C. Law 9-163; 39 DCR 5705).

Expiration of Law 9-163. — Section 6(b) of D.C. Law 9-163 provided that, except for section 5, the act shall expire on October 1, 1997.

Expiration of Law 9-163. — Section 2(b) of D.C. Law 12-253 provided that § 6(b) of D.C. Law 9-163 is repealed.

Editor's notes. — The current version of this section was enacted following the expiration of the section as previously enacted. The prior version of the section was first temporarily enacted by D.C. Act 8-7 (March 21, 1989, 36 DCR 2239); it was next temporarily enacted by D.C. Law 8-3, effective May 23, 1989 (36 DCR 2373), with an expiration on the 225th day of its having taken effect. The section was permanently enacted by D.C. Law 8-95, effective March 15, 1990 (37 DCR 786), with an expiration on April 1, 1992.

Metal detectors authorized: Section 4 of D.C. Law 10-5 provided that to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board's commitment in the fiscal year 1992 budget process.

Mayor authorized to issue regulations: Section 4 of D.C. Law 9-163 provided that the Mayor shall issue regulations necessary to carry out the provisions of this act.

§ 5-762. Retired police officer deployment as public school security personnel.

(a)(1) Except for disability annuitants, police officers retired from the Metropolitan Police force shall be eligible for rehire at the discretion of the Superintendent of the D.C. Public Schools as security personnel of the D.C. Public Schools without jeopardy to the retirement benefits of the police officers.

(2) Service pursuant to this section shall not count as creditable service for the purpose of § 5-704.

(3) A retired police officer who is rehired under this section shall be paid a salary of no more than that equal to the salary paid a Class 1, Step 1 Officer within the Metropolitan Police Department and shall not be eligible for longevity pay.

(4) A retired police officer who is rehired pursuant to this section shall be vested with the powers of a Special Police Officer with the Uniform Waivers pursuant to § 5-129.02, not including the authority to carry a firearm.

(b) All costs associated with the hiring of retired police officers as school security guards shall be absorbed within the D.C. Public Schools budget.

(c) A retired police officer who is rehired pursuant to this section and is vested with the powers of a Special Police Officer would be subject to the requirements of 6A DCMR, Chapter 11, which governs Special Police.

(July 23, 1994, D.C. Law 10-136, § 2, 41 DCR 3006; May 16, 1995, D.C. Law 10-255, § 48, 41 DCR 5193.)

Prior Codifications. — 1981 Ed., § 4-618.2.

Temporary Amendment of Section. — For temporary (225 day) addition of section, see § 2 of Retired Police Officer Public Schools Security Personnel Deployment Temporary Amendment Act of 1993 (D.C. Law 10-5, July 31, 1993, law notification 40 DCR 5629).

Legislative history of Law 10-136. — Law 10-136, the “Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-113, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-241 and transmitted to both Houses of Congress for its review. D.C. Law 10-136 became effective on July 23, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 25, 1995.

Editor’s notes. — Application of Law 10-136: Section 6(b) of D.C. Law 10-136 provided that the act shall apply as of March 6, 1994.

Board to install metal detectors: Section 4 of D.C. Law 10-5 provided that “to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board’s commitment in the fiscal year 1992 budget process.”

CHAPTER 8. POLICE RETIREMENT WHILE UNDER DISCIPLINARY INVESTIGATION.

Sec.		Sec.
5-801. Definitions.		5-805. Payment of penalties.
5-802. Completion of disciplinary investigations.		5-806. Administrative review.
5-803. Conditional retirement.		5-807. Applicability.
5-804. Penalties in lieu of discipline for members in conditional retirement.		

§ 5-801. Definitions.

For the purposes of this chapter:

(1) "Conditional Retirement" means that a member has retired from the Metropolitan Police Department while under disciplinary investigation for serious misconduct.

(2) "Disciplinary Investigation" means any official investigation by the Metropolitan Police Department, including the Office of Internal Affairs, of allegations of serious misconduct by any member of the Metropolitan Police Department.

(3) "Resignation" means the voluntary separation of a member from the Metropolitan Police Department before the member's pension rights have accrued and vested.

(4) "Retirement" means the voluntary separation of a member from the Metropolitan Police Department after the member's pension rights, retirement pay, or other benefits have accrued and vested as provided by federal or District of Columbia law or regulation.

(5) "Serious Misconduct" means any felony violation of federal, local, or District of Columbia law, making of a false statement under oath, falsification of official records or reports, unnecessary force, comprising a felony or assisting a person to escape investigation or prosecution, use of illegal controlled substances, or other violations as determined by the Chief of Police by general order.

(Oct. 4, 2000, D.C. Law 13-160, § 502, 47 DCR 4619.)

Legislative history of Law 13-160. — Law 13-160, the "Omnibus Police Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second

readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for its review. D.C. Law 13-160 became effective on October 4, 2000.

§ 5-802. Completion of disciplinary investigations.

The Metropolitan Police Department shall complete a disciplinary investigation, including issuing findings pursuant to the general orders, of a member regardless of whether that member resigns or retires while under investigation.

(Oct. 4, 2000, D.C. Law 13-160, § 503, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-801.

§ 5-803. Conditional retirement.

(a) If a member of the Metropolitan Police Department retires or resigns while under disciplinary investigation, that member shall be deemed to be in conditional retirement until the disciplinary investigation is completed and factual findings are made.

(b) A member who is in conditional retirement shall not be paid a pension or receive other accrued benefits of any kind, including salary, compensatory time, or accrued leave, during the pendency of the disciplinary investigation into his alleged misconduct.

(c) The Metropolitan Police Department shall complete the disciplinary investigation of any member in conditional retirement within 25 days from the date that the member retired or resigned. If the Metropolitan Police Department has not completed the investigation 25 days from the date of retirement or resignation, the matter shall be deemed to be closed and the allegations of misconduct not sustained.

(d) If, at any time during a member's conditional retirement, the Metropolitan Police Department finds that the allegations of serious misconduct are not sustained or are unfounded, the matter shall be deemed to be closed and the member's pension rights and accrued benefits shall be paid retroactive to the date on which the member initially retired or resigned from the Metropolitan Police Department.

(e) If the Metropolitan Police Department sustains the allegations of serious misconduct, the disciplinary process shall proceed as if the member in conditional retirement continued to be a member of the Metropolitan Police Department. The member shall be accorded all rights to which he is entitled under federal and District of Columbia law and regulations, police regulations, and any applicable labor agreement.

(f) If the Metropolitan Police Department ultimately determines that a member in conditional retirement should be subjected to discipline as provided by law and regulation, the member shall be subject to penalties in lieu of discipline as provided in § 5-804.

(g) A member who retires or resigns from the Metropolitan Police Department without knowing that he or she was under disciplinary investigation for serious misconduct shall not be deemed to be in conditional retirement, but shall instead be provided the opportunity to continue employment with the Metropolitan Police Department during the pendency of the disciplinary investigation. Should the member decide to retire or resign after he or she has been informed of the disciplinary investigation, he or she shall be deemed to be in conditional retirement as provided in this section.

(Oct. 4, 2000, D.C. Law 13-160, § 504, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-801.

§ 5-804. Penalties in lieu of discipline for members in conditional retirement.

(a) The Metropolitan Police Department shall set the level of discipline for a member in conditional retirement as if he or she continued to be a member of the Metropolitan Police Department.

(b) A member in conditional retirement who would have received suspension as discipline had he or she remained a member of the Metropolitan Police Department, shall be assessed a penalty of not less than \$100 and not greater than \$5,000, depending on the length of suspension.

(c) If a member in conditional retirement would have been terminated from the Metropolitan Police Department as discipline for serious misconduct the member shall be assessed a penalty of not less than \$1,000 and not greater than \$5,000 in the discretion of the Chief of Police, pursuant to written standards developed by the Chief of Police.

(Oct. 4, 2000, D.C. Law 13-160, § 505, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-801.

§ 5-805. Payment of penalties.

Penalties assessed against a member in conditional retirement as provided in § 5-804 shall be treated as a debt owed to the District of Columbia government and shall be deducted from the member's pension, retirement pay, or any other accrued benefits.

(Oct. 4, 2000, D.C. Law 13-160, § 506, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-801.

§ 5-806. Administrative review.

A member in conditional retirement may challenge the imposition of penalties imposed by §§ 5-804 and 5-805 in an administrative proceeding before the District of Columbia Office of Employee Appeals, pursuant to Chapter 5 of Title 2.

(Oct. 4, 2000, D.C. Law 13-160, § 507, 47 DCR 4619.)

Legislative history of Law 13-160. — For Law 13-160, see notes following § 5-801.

§ 5-807. Applicability.

This chapter shall apply upon adoption of regulations by the Chief of Police to implement this chapter. The Chief of Police shall adopt such regulations within 60 days of October 4, 2000.

(Oct. 4, 2000, D.C. Law § 13-160, § 508, 47 DCR 4619.)

§ 5-807

POLICE, FIREFIGHTERS, & MEDICAL EXAMINER

Legislative history of Law 13-160. — For
D.C. Law 13-160, see notes following § 5-801.

CHAPTER 9. AWARDS FOR MERITORIOUS SERVICE.

Sec.

5-901. Annual awards for meritorious service.

5-902. [Repealed].

Sec.

5-903. Preference in promotions.

5-904. Appropriation authorized.

§ 5-901. Annual awards for meritorious service.

For the official recognition of outstanding acts in the line of duty by the members of the Police, Fire, and Corrections Departments of the District of Columbia there shall be awarded annually 1 gold medal and 1 or more silver medals, appropriately inscribed, to those members of each Department who have by outstanding or conspicuous services earned such awards.

(Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 1; July 24, 1956, 70 Stat. 627, ch. 685, § 1; June 29, 1984, D.C. Law 5-94, § 2(b), 31 DCR 2549.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-701. 1973 Ed., § 4-701.

Legislative history of Law 5-94. — Law 5-94, the “Correctional Officers Meritorious Service Recognition Amendment Act of 1984,”

was introduced in Council and assigned Bill No. 5-342, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-135 and transmitted to both Houses of Congress for its review.

§ 5-902. Committee to make awards. [Repealed].

Repealed.

(Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 2; June 29, 1984, D.C. Law 5-94, § 2(b), 31 DCR 2549; Apr. 29, 1998, D.C. Law 12-86, § 401(e), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 4-702. 1973 Ed., § 4-702.

Legislative history of Law 5-94. — For legislative history of D.C. Law 5-94, see Historical and Statutory Notes following § 5-901.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-903. Preference in promotions.

When promotions are being made in the Departments, the holders of such

medals shall be preferred to other members of said Departments, other things being equal.

(Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 3.)

Prior Codifications. — 1981 Ed., § 4-703. 1973 Ed., § 4-703.

§ 5-904. Appropriation authorized.

To provide for the cost of such medals there is hereby authorized to be appropriated annually such sum as the Mayor of the District of Columbia may deem necessary for the purpose.

(Mar. 4, 1929, 45 Stat. 1557, ch. 696, § 4.)

Prior Codifications. — 1981 Ed., § 4-704.
1973 Ed., § 4-704.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 10. TRIAL BOARDS.

*Subchapter I. General**Subchapter II. Oaths*

- Sec. *
 5-1001. Attendance of witnesses — Issuance of subpoenas; fees.
 5-1002. Attendance of witnesses — Wilful false swearing.
 5-1003. Attendance of witnesses — Neglect or refusal to obey subpoena.

- Sec.
 5-1011. Oath of members.
Subchapter III. Investigations of Municipal Matters
 5-1021. Investigations of municipal matters; authority to administer oaths.

*Subchapter I. General.***§ 5-1001. Attendance of witnesses — Issuance of subpoenas; fees.**

Any trial board of the Metropolitan Police force or the Fire Department of the District of Columbia shall have the power to issue subpoenas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board; provided, that witnesses other than those employed by the District of Columbia subpoenaed to appear before said trial board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers or documents before said trial board.

(May 11, 1892, 27 Stat. 29, ch. 65, § 1; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 1; Apr. 16, 1932, 47 Stat. 86, ch. 118, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(14)(A).)

Cross references. — Insanitary buildings, condemnation, condemnation review board, see § 6-902.

Merit system, Application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in §§ 5-1002 and 5-1003.

Prior Codifications. — 1981 Ed., § 4-801. 1973 Ed., § 4-601.

§ 5-1002. Attendance of witnesses — Wilful false swearing.

Any wilful false swearing on the part of any witness before any trial board mentioned in § 5-1001 as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense.

(May 11, 1892, 27 Stat. 29, ch. 65, § 2; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 2; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 3.)

Cross references. — Insanitary buildings, condemnation, condemnation review board, see § 6-902.

Prior Codifications. — 1981 Ed., § 4-802. 1973 Ed., § 4-602.

§ 5-1003. Attendance of witnesses — Neglect or refusal to obey subpoena.

If any witness, having been personally summoned, shall neglect or refuse to obey the subpoena issued in § 5-1001, then in that event the chairman of the trial board may report that fact to the Superior Court of the District of Columbia or 1 of the judges thereof and said Court, or any judge thereof, is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that Court.

(May 11, 1892, 27 Stat. 29, ch. 65, § 3; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 3; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(14)(B).)

Cross references. — Insanitary buildings, condemnation, condemnation review board, see § 6-902.

Investigations and examinations, see § 5-1021.

Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-803. 1973 Ed., § 4-603.

Subchapter II. Oaths.

§ 5-1011. Oath of members.

Each member of the trial boards shall take an oath to be administered by the Chief Clerk of the Police Department for the faithful and impartial performance of the duties of the office.

(Apr. 16, 1932, 47 Stat. 87, ch. 118, § 4.)

Prior Codifications. — 1981 Ed., § 4-804. 1973 Ed., § 4-604.

Transfer of Functions. — Reorganization Order No. 46 of the Board of Commissioners, dated June 26, 1953, established in the Metropolitan Police Department the Chief Clerk's section. The Order set forth the functions of the Chief Clerk's section and abolished the previously existing office. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. Reorganization Order No. 46 was replaced by Organization Order No. 153, dated November

10, 1966. Organization Order No. 8, dated April 18, 1968, revoked Organization Order No. 153 to the extent the same was inconsistent with Organization Order No. 8. Commissioner's Order No. 69-614, dated November 13, 1969, provided in part that the Metropolitan Police Department shall continue in existence, headed by a Chief of Police who shall be responsible for the functions of said Department as previously established and constituted by Organization Order No. 153, as amended.

Subchapter III. Investigations of Municipal Matters.

§ 5-1021. Investigations of municipal matters; authority to administer oaths.

After July 1, 1902, the several provisions of subchapter I of this chapter shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Mayor of the District of Columbia, and the Council of

the District of Columbia with respect to functions transferred to it by Reorganization Plan No. 3 of 1967, as well as to the proceedings before the trial boards named in that subchapter; and said Mayor and each member of the Council are hereby authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid.

(July 1, 1902, 32 Stat. 591, ch. 1352.)

Prior Codifications. — 1981 Ed., § 1-331. 1973 Ed., § 1-237.

CHAPTER 10A. POLICE AND FIREFIGHTERS DISCIPLINARY ACTION
PROCEDURES.

Sec.

5-1031. Commencement of corrective or adverse action.

Sec.

5-1032. Report on misconduct allegations and grievances.

§ 5-1031. Commencement of corrective or adverse action.

(a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.

(b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the Office of the United States Attorney for the District of Columbia, or the Office of Corporation Counsel, or an investigation by the Office of Police Complaints, the 90-day period for commencing a corrective or adverse action under subsection (a) of this section shall be tolled until the conclusion of the investigation.

(Sept. 30, 2004, D.C. Law 15-194, § 502, 51 DCR 9406.)

Legislative history of Law 15-194. — Law 15-194, the “Omnibus Public Safety Agency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-32, which was referred to the Committee on the Judiciary. The Bill was adopted on first and

second readings on April 6, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 24, 2004, it was assigned Act No. 15-463 and transmitted to both Houses of Congress for its review. D.C. Law 15-194 became effective on September 30, 2004.

CASE NOTES

In general.

Ninety-day period for Fire and Emergency Medical Services Department to propose removal of emergency medical technician for alleged mishandling of an emergency call began to run on date that panel of Department leaders interviewed technician in an investigation of the incident, not on subsequent date after release of report on incident by Office of the Inspector General (OIG), since grounds for technician’s removal were clear on date of interview; even though during interview, technician was more evasive in her answers than her partner, the differences between their answers did not give rise to uncertainty about whether misconduct had occurred. D.C. Fire & Med. Servs. Dep’t v. D.C. Office of Empl. Appeals, 986 A.2d 419, 2010 D.C. App. LEXIS 1 (2010).

Disciplinary action against police officer less

than a week after effective date of new statute of limitations was commenced within a reasonable time and thus within grace period for adjusting to the new time limit. *Finch v. District of Columbia*, 894 A.2d 419, 2006 D.C. App. LEXIS 138 (2006).

Enactment of a statute of limitations of ninety days for initiating corrective or adverse action against police and fire department employees required a reasonable grace period of at least ninety days to adjust to the new limitations period where none had previously existed; thus, even though police department knew of basis for discipline more than ninety days before initiating action, it was entitled to a reasonable period after effective date of new statute to initiate the action. *Finch v. District of Columbia*, 894 A.2d 419, 2006 D.C. App. LEXIS 138 (2006).

§ 5-1032. Report on misconduct allegations and grievances.

The Chief of Police and the Fire Chief shall, not later than January 15 of each calendar year, beginning in 2006, deliver a report to the Mayor and the Council concerning misconduct and grievances filed by or against members of their respective departments. The report shall contain:

(1) The number of individuals, of all rank and services, investigated and disciplined for misconduct, categorized by the nature of the misconduct allegations, the nature of those misconduct allegations that are substantiated, and the discipline given for substantiated allegations; and

(2) The number of formal grievances filed by individuals, including complaints filed with each agency's Equal Employment Opportunity Officer, categorized by the nature of the grievance filed and the nature of those grievances that are substantiated.

(Sept. 30, 2004, D.C. Law 15-194, § 503, 51 DCR 9406.)

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-1031.

CHAPTER 11. REVIEW OF CITIZEN COMPLAINTS INVOLVING POLICE.

Subchapter I. Police Complaints Board; Office of Police Complaints.

Sec.

5-1101. Findings.

5-1102. Purpose.

5-1103. Definitions.

5-1104. Police Complaints Board.

5-1105. Office of Police Complaints establishment; appointment of Executive Director.

5-1106. Duties of the Executive Director.

5-1107. Authority of the Office and processing of complaint.

5-1108. Dismissal of complaint.

Sec.

5-1109. Referral of complaint to the United States Attorney.

5-1110. Conciliation and mediation.

5-1111. Complaint investigation, findings, and determination.

5-1112. Action by the Metropolitan Police Department.

5-1113. Effect of order dismissing complaint.

5-1114. Metropolitan Police Department disciplinary authority.

5-1115. Funding and compensation.

Subchapter II. Civilian Complaint Review Board.

5-1131 to 5-1140. [Repealed].

Subchapter I. Police Complaints Board; Office of Police Complaints.

§ 5-1101. Findings.

The Council of the District of Columbia finds that:

(1) The District of Columbia delegated to the Metropolitan Police Department ("MPD") the vital task of protecting the safety of persons and property in the District of Columbia. This task is difficult, dangerous, and sensitive.

(2) Most members of the MPD perform their duties with diligence, devotion, and sensitivity. From time to time, however, some members of the MPD do not act in accordance with the high standards of conduct that the people of the District of Columbia have a right to expect. On other occasions, honest misunderstandings arise between police officers and members of the public with whom they interact.

(3) Because police officers have been given extraordinary powers, it is essential that there be an effective and efficient system for reviewing their exercise of police powers. Further, it is essential that both police officers and members of the public have confidence that this system of review is fair and unbiased. Members of the public must be aware of this system and have easy access to its processes.

(4) The need for independent review of police activities is recognized across the nation. Effective independent review enhances communication and mutual understanding between the police and the community, reduces community tensions, deters police misconduct, and increases the public's confidence in their police force.

(5) Some complaints against police officers involve serious charges requiring formal disciplinary proceedings. Many, though, can be resolved through conciliation, mediation, or other dispute resolution techniques. An effective and efficient review mechanism should encompass a variety of procedures for dealing with different complaints in an appropriate manner.

(Mar. 26, 1999, D.C. Law 12-208, § 2, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-911.

Legislative history of Law 12-208. — Law 12-208, the “Office of Citizen Complaint Review Establishment Act of 1998,” was introduced in Council and assigned Bill No. 12-521, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second read-

ings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-495 and transmitted to both Houses of Congress for its review. D.C. Law 12-208 became effective on March 26, 1999.

§ 5-1102. Purpose.

The purpose of this subchapter is to establish an effective, efficient, and fair system of independent review of citizen complaints against police officers in the District of Columbia, which will:

- (1) Be visible to and easily accessible to the public;
- (2) Investigate promptly and thoroughly claims of police misconduct;
- (3) Encourage the mutually agreeable resolution of complaints through conciliation and mediation where appropriate;
- (4) Provide adequate due process protection to officers accused of misconduct;
- (5) Provide fair and speedy determination of cases that cannot be resolved through conciliation or mediation;
- (6) Render just determinations;
- (7) Foster increased communication and understanding and reduce tension between the police and the public; and
- (8) Improve the public safety and welfare of all persons in the District of Columbia.

(Mar. 26, 1999, D.C. Law 12-208, § 3, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-912.

Legislative history of Law 12-208. — For

legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

§ 5-1103. Definitions.

For purposes of this subchapter, the term:

- (1) “Board” means the Police Complaints Board.
- (2) “Complaint examiner” means the person designated by the Executive Director to determine the merits of a complaint.
- (3) “Executive Director” means the head of the Office of Police Complaints.
- (3A) “Gender identity or expression” shall have the same meaning as provided in § 2-1401.02(12A).
- (4) “Office” means the Office of Police Complaints.

(Mar 26, 1999, D.C. Law 12-208, § 4, 45 DCR 8107; Sept. 30, 2004, D.C. Law 15-194, § 902(a), 51 DCR 9406; June 25, 2008, D.C. Law 17-177, § 8(a), 55 DCR 3696.)

Prior Codifications. — 1981 Ed., § 4-913.

Effect of amendments. — D.C. Law 15-194, in pars. (1), (3), and (4), substituted “Police Complaints” for “Citizen Complaint Review”.

D.C. Law 17-177 added par. (3A).

Legislative history of Law 12-208. — For legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 17-177. — Law 17-177, the “Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce

Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

§ 5-1104. Police Complaints Board.

(a) There is established a Police Complaints Board (“Board”). The Board shall be composed of 5 members, one of whom shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency. All members of the Board shall be residents of the District of Columbia. The members of the Board shall be appointed by the Mayor, subject to confirmation by the Council. The Mayor shall submit a nomination to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved.

(b) Board members first appointed after March 26, 1999 shall serve as follows: 2 shall serve for a 3-year term; 2 shall serve for a 2-year term; and one shall serve for a 1-year term. Thereafter, Board members shall serve for a term of 3 years from the date of appointment to a full term or until a successor has been appointed. All board members shall serve without compensation. A Board member may be reappointed. The Mayor shall designate the chairperson of the Board, and may remove a member of the Board from office for cause. A person appointed to fill a vacancy on the Board occurring prior to the expiration of a term shall serve for the remainder of the term or until a successor has been appointed.

(c) A quorum for the transaction of business shall be 3 members of the Board.

(d) The Board shall conduct periodic reviews of the citizen complaint review process, and shall make recommendations, where appropriate, to the Mayor, the Council, and the Chief of the Metropolitan Police Department (“Police Chief”) concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate, make recommendations to the above-named entities concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers.

(d-1) The Board may, where appropriate, monitor and evaluate MPD’s handling of, and response to, First Amendment assemblies, as defined in § 5-333.02, held on District streets, sidewalks, or other public ways, or in District parks.

(e) Within 60 days of the end of each fiscal year, the Board shall transmit to the entities named in subsection (d) of this section an annual report of the operations of the Board and the Office of Police Complaints.

(f) The Board is authorized to apply for and receive grants to fund its program activities in accordance with laws and regulations relating to grant management.

(Mar. 26, 1999, D.C. Law 12-208, § 5, 45 DCR 8107; June 12, 1999, D.C. Law 12-285, § 4(e), 45 DCR 8107; Sept. 30, 2004, D.C. Law 15-194, § 902(b), 51 DCR 9406; Apr. 13, 2005, D.C. Law 15-352, § 141, 52 DCR 2296.)

Cross references. — Mayoral nomination of agency heads, Police Complaints Board, see § 1-523.01.

Prior Codifications. — 1981 Ed., § 4-914.

Effect of amendments. — D.C. Law 15-194, in the section heading and subsec. (a), substituted "Police Complaints Board" for "Citizen Complaint Review Board"; in subsec. (d), deleted "the Financial Responsibility and Management Assistance Authority," following "the Council"; and in subsec. (e), substituted "Police Complaints" for "Citizen Complaint Review".

D.C. Law 15-352 added subsec. (d-1).

Emergency legislation. — For temporary amendment of section, see § 4(e) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90-day) amendment of section, see § 4(e) of the Confirmation Act Congressional Review Emergency Amendment Act

of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

Legislative history of Law 12-208. — For legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

Legislative history of Law 12-285. — Law 12-285, the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-261. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Vetoed by the mayor on December 29, 1998, Council overrode the veto on January 5, 1999, and the bill was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

CASE NOTES

ANALYSIS

Construction with other laws.

Discipline.

Hearings.

Training.

Weapons.

Construction with other laws.

Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. District of Columbia Metro. Police Dep't v. Perry, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Although recognizing that it could only affirm administrative agency's decision for reasons given by the agency, Court of Appeals would look to recommendations of hearing examiners in effort to more fully understand precise meaning of Office of Employee Appeals' (OEA) determination, that Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency, because OEA affirmed recommendations of examiners and indicated agreement therewith. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. District of Columbia Metro. Police Dep't v. Perry, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Concept of special knowledge and expertise of agency that underlies rule according deference to agency in its interpretation of statute that it is empowered to administer and enforce had less applicability with respect to Court of Appeals review of Office of Employee Appeals' (OEA) decision interpreting and reconciling Comprehensive Merit Personal Act (CMPA) with Civilian Complaint Review Board (CCRB) Act since OEA did not administer CCRB Act. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. District of Columbia Metro. Police Dep't v. Perry, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Discipline.

District of Columbia's chronic delays in investigating and resolving citizen complaints of excessive force by police officers, resulting in delayed discipline which, in practice, was functional equivalent of no discipline, was "policy," for which city could be held liable under § 1983, if policy amounted to deliberate indifference to rights of persons with whom police came into contact. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-901 to 4-911. Cox v. District of Columbia, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Causation existed in § 1983 claim against municipality alleging that municipality's system of disciplining police officers violated citizen's constitutional rights, where had municipality possessed functional system of discipline,

police officer charged with excessive force would have been removed from service before incident between citizen and police officer since rule required police department to terminate probationary employees deemed unsatisfactory. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-106, 4-901 to 4-911, 4-903(b)(2), (c, d), 4-905(a), 4-909(e). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Municipality's policy of delaying processing of citizens' complaints of excessive force by police officers through civilian complaint review board (CCRB) certainly permitted serious misconduct by police officers to go unchecked, and, in that sense, policy caused or was substantial factor in citizen's injuries resulting from excessive force used by police officer so as to render municipality liable under § 1983; there clearly existed an inadequate system of discipline and municipality knew or should have known that system would cause injury. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-106, 4-901 to 4-911, 4-903(b)(2), (c, d), 4-905(a), 4-909(e). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Hearings.

Civilian complaint review board's (CCRB) consistent and utter failure to abide by statutory deadlines for hearing cases brought by citizens involving excessive force complaints against police officers became "custom" of delib-

erate indifference to citizens' complaints of excessive force; although CCRB was mandated to schedule hearing within 30 days of citizen's complaint, that requirement was virtually ignored since promulgation. D.C. Code 1981, §§ 4-901 to 4-911, 4-903(c), 4-905(a). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

Training.

Police union press release stating results of survey indicating that three-fourths of the 20% of the group's members who were surveyed answered "no" to questions whether police academy and in-service training was adequate was insufficient to create triable issue in excessive force case as to police chief's failure to train and supervise officers. 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-901, 4-909(c). *Fulwood v. Porter*, 639 A.2d 594, 1994 D.C. App. LEXIS 40 (1994).

Weapons.

Fact that weapons review board may investigate complaint in which service weapon was used by police officer if brought to its attention did not divest civilian complaint review board (CCRB) of its obligation to investigate complaint of excessive force filed with CCRB. D.C. Code 1981, §§ 4-106, 4-176, 4-901 to 4-911, 4-903(b)(2), (d). *Cox v. District of Columbia*, 821 F. Supp. 1, 1993 U.S. Dist. LEXIS 5402 (1993), affirmed without opinion by 40 F.3d 475, 309 U.S. App. D.C. 219 (1994).

§ 5-1105. Office of Police Complaints establishment; appointment of Executive Director.

(a) There is established an Office of Police Complaints ("Office").

(b) The Office shall be headed by an Executive Director. The Executive Director shall be an attorney who is an active member in good standing of the District of Columbia Bar. The Board shall appoint the Executive Director to serve for a term of 3 years, or until a successor is appointed. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause. The Executive Director shall receive such compensation as is established by the Board.

(Mar. 26, 1999, D.C. Law 12-208, § 6, 45 DCR 8107; Sept. 30, 2004, D.C. Law 15-194, § 902(c), 51 DCR 9406.)

Prior Codifications. — 1981 Ed., § 4-915.

Effect of amendments. — D.C. Law 15-194, in the section heading and in subsec. (a), substituted "Police Complaints" for "Citizen Complaint Review".

Legislative history of Law 12-208. — For legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 5-105.01.

§ 5-1106. Duties of the Executive Director.

(a) The Executive Director shall employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform the work of the Office, including the investigation of complaints. The Executive Director may employ persons on a full-time or part-time basis, or retain the services of contractors for the purpose of resolving a particular case or cases, as may be determined by the Executive Director, except that complaint investigators may not be persons currently or formerly employed by the MPD. Chapter 6 of Title 1 shall apply to the Executive Director and other employees of the Office.

(b) The Executive Director shall supervise all employees and volunteers of the Office, and shall ensure that all rules, regulations, and orders are carried out properly, and that all records of the Office are maintained properly.

(c) Subject to approval of the Board, the Executive Director shall establish a pool of qualified persons who shall be assigned by the Executive Director to carry out the mediation and complaint determination functions set forth in this chapter. In selecting a person to be a member of this pool, the Executive Director shall take into consideration each person's education, work experience, competence to perform the functions required of a dispute mediator or complaint hearing examiner, and general reputation for competence, impartiality, and integrity in the discharge of his responsibilities. No member of the pool shall be a current or former employee of the MPD. For their services, the members of this pool shall be entitled to such compensation as the Executive Director, with the approval of the Board, shall determine, provided that the compensation shall be on a per-case basis, not a per-hour, basis.

(d) The Board shall have the authority to promulgate rules to implement the provisions of this subchapter. Such rules shall be promulgated in accordance with subchapter I of Chapter 5 of Title 2, and shall be subject to review and approval by the Board before becoming effective.

(Mar. 26, 1999, D.C. Law 12-208, § 7, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-916. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1107. Authority of the Office and processing of complaint.

(a) The Office shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD, and any other agency pursuant to subsection (j) of this section that alleges abuse or misuse of police powers by such member or members, including:

- (1) Harassment;
- (2) Use of unnecessary or excessive force;
- (3) Use of language or conduct that is insulting, demeaning, or humiliating;
- (4) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orienta-

tion, gender identity or expression, family responsibilities, physical disability, matriculation, political affiliation, source of income, or place of residence or business;

(5) Retaliation against a person for filing a complaint pursuant to this chapter; or

(6) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.

(b) If a complaint alleges misconduct that is not within the authority of the Office to review, the Executive Director shall refer the allegation to the Police Chief for further processing by the MPD, as appropriate.

(c) Any individual having personal knowledge of alleged police misconduct may file a complaint with the Office on behalf of a victim.

(d) To be timely, a complaint must be received by the Office within 45 days from the date of the incident that is the subject of the complaint. The Executive Director may extend the deadline for good cause.

(e) Each complaint shall be reduced to writing and signed by the complainant.

(f) Complaint forms shall conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."

(g) The Executive Director shall screen each complaint and may request additional information from the complainant. Within 7 working days of the receipt of the complaint, or within 7 working days of the receipt of additional information requested from the complainant, the Executive Director shall take one of the following actions:

(1) Dismiss the complaint, with the concurrence of one member of the Board;

(2) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;

(3) Attempt to conciliate the complaint;

(4) Refer the complaint to mediation; or

(5) Refer the complaint for investigation.

(h) The Executive Director shall notify in writing the complainant and the subject police officer or officers of the action taken under subsection (g) of this section. If the complaint is dismissed, the notice shall be accompanied by a brief statement of the reasons for the dismissal, and the Executive Director shall notify the complainant that the complaint may be brought to the attention of the Police Chief who may direct that the complaint be investigated and that appropriate action be taken.

(i) For purposes of § 1-616.01 [repealed], the receipt by the Office of an oral or written complaint shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such complaint. For purposes of § 1-616.01, the MPD shall be deemed to know or have cause to know of the acts, occurrences, or allegations in a complaint received by the Office at the time the MPD receives written notice from the Office that an allegation in a complaint processed by the Office has been sustained.

(j) This subchapter shall also apply to the District of Columbia Housing Authority Police Department and to any federal law enforcement agency that,

pursuant to Chapter 3 of this title, has a cooperative agreement with the MPD that requires coverage by the Office; provided, that the Chief of the respective law enforcement department or agency shall perform the duties of the MPD Chief of Police for the members of their respective departments.

(Mar. 26, 1999, D.C. Law 12-208, § 8, 45 DCR 8107; May 9, 2000, D.C. Law 13-100, § 5, 46 DCR 794; Apr. 13, 2005, D.C. Law 15-352, § 331, 52 DCR 2296; Apr. 24, 2007, D.C. Law 16-305, § 18, 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 8(b), 55 DCR 3696.)

Prior Codifications. — 1981 Ed., § 4-917.

Effect of amendments. — D.C. Law 13-100, in subsec. (a), substituted “MPD, and any other agency pursuant to subsection (j) of this section” for the acronym “MPD”, and added subsec. (j), relating to additional applicability of the chapter.

D.C. Law 15-352, in subsec. (a), deleted “or” from the end of par. (4), substituted “; or” for a period at the end of par. (5), and added par. (6).

D.C. Law 16-305, in subsec. (a)(4), substituted “disability” for “handicap”.

D.C. Law 17-177, in subsec. (a)(4), substituted “sexual orientation, gender identity or expression” for “sexual orientation”.

Legislative history of Law 12-208. — For legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

Legislative history of Law 13-100. — Law 13-100, the “Federal Law Enforcement Officer Cooperation Act of 1999,” was introduced in Council and assigned Bill No. 13-302, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-246 and transmitted to both Houses of Congress for its review. D.C. Law 13-100 became effective on May 9, 2000.

Legislative history of Law 15-352. — For Law 15-352, see notes following § 5-331.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 5-119.10.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 5-1103.

§ 5-1108. Dismissal of complaint.

A complaint may be dismissed on the following grounds:

- (1) The complaint is deemed to lack merit;
- (2) The complainant refuses to cooperate with the investigation; or
- (3) If, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process.

(Mar. 26, 1999, D.C. Law 12-208, § 9, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-918.

Legislative history of Law 12-208. — For

legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

§ 5-1109. Referral of complaint to the United States Attorney.

(a) When, in the determination of the Executive Director, there is reason to believe that the misconduct alleged in a complaint or disclosed by an investigation of the complaint may be criminal in nature, the Executive Director shall refer the matter to the United States Attorney for the District of Columbia for possible criminal prosecution. The referral shall be accompanied by a copy of all of the Office’s files relevant to the matter being referred.

(b) The Executive Director shall give written notification of such referral to the Police Chief, the complainant, and the subject officer or officers. The receipt of notification by the Police Chief that a matter has been referred to the United

States Attorney for the District of Columbia shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such referral for purposes of § 1-616.01 [repealed].

(c) The Executive Director shall maintain a record of each referral, and ascertain and record the disposition of each matter referred to the United States Attorney.

(d) If the United States Attorney declines in writing to prosecute, the Office shall resume its processing of the complaint, and thereafter the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108, conciliate the complaint, refer the complaint to mediation, or refer the complaint for investigation, as appropriate.

(Mar. 26, 1999, D.C. Law 12-208, § 10, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-919. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1110. Conciliation and mediation.

(a) If deemed appropriate by the Executive Director, and if the parties agree to participate in a conciliation process, the Executive Director may attempt to resolve a complaint by conciliation.

(b)(1) The conciliation of a complaint shall be evidenced by a written agreement signed by the Executive Director and the parties which may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. No oral or written statements made in conciliation proceedings may be used as a basis for any discipline or recommended discipline against a subject police officer or officers or in any civil or criminal litigation.

(2) The parties may agree in writing that a written conciliation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to subchapter II of Chapter 5 of Title 2.

(c) If conciliation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108, refer the complaint to mediation, or refer the complaint for investigation.

(d) If the Executive Director refers the complaint to mediation, the Executive Director shall assign the matter to a member of the pool who is experienced in mediation, shall schedule an initial mediation session for the earliest convenient time, and shall notify the complainant and subject police officer or officers in writing of the date, time, and location of the initial mediation session.

(e) The complainant, the subject police officer or officers, and the mediator shall be present at mediation sessions. Alternatively, the mediator may meet individually with the complainant and the subject police officer or officers. Except as provided in this subsection, no other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint. An interpreter shall be present when necessary for effective communication and shall be provided by the Office when timely requested by a party. When the complain-

ant is under 18 years of age or is an adult who, because of mental, physical, or emotional condition or disability, cannot participate competently in mediation, a parent, guardian, conservator, or other responsible adult must be present at mediation sessions.

(f) The mediation process shall continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond 30 days from the date of the initial mediation session without the approval of the Executive Director. No oral or written statement made during the mediation process may be used by the Office or the MPD as a basis for any discipline or recommended discipline of the subject police officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(g) If mediation is successful, the mediator and the parties shall sign a mediation agreement resolving the complaint. The Executive Director shall place a copy of the mediation agreement in the complaint file and shall forward a copy of the mediation agreement to the Police Chief. The Police Chief shall monitor the conduct of the police officer or officers to determine that the police officer complies with the terms of an agreement reached after mediation.

(h) The parties may agree in writing that a mediation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to subchapter II of Chapter 5 of Title 2.

(i) If mediation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108, may refer the complaint for investigation, or may refer the complaint for adjudication if the Executive Director determines that further investigation is unnecessary.

(j) If, after the Executive Director refers a complaint to mediation, the complainant willfully fails to participate in good faith in the mediation process, the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108, may refer the complaint for investigation, or may refer the complaint to a complaint examiner for adjudication of the merits of the complaint if the Executive Director determines that further investigation is unnecessary.

(k) If, after the Executive Director refers a complaint to mediation, any police officer subject to the complaint refuses to participate in the mediation process in good faith, such refusal or failure shall constitute cause for discipline by the Police Chief. The Police Chief shall cause appropriate disciplinary action to be instituted against the police officer for such a violation and shall notify the Executive Director of the outcome of such action. In the event that the subject police officer refuses to participate in the mediation process or fails to participate in the mediation process in good faith, the Executive Director shall refer the complaint for investigation, or may refer the complaint for adjudication if further investigation is deemed unnecessary.

(Mar. 26, 1999, D.C. Law 12-208, § 11, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-920. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1111. Complaint investigation, findings, and determination.

(a) If the Executive Director refers a complaint for investigation, the Executive Director shall assign an investigator to investigate the complaint.

(b) If the complainant refuses to cooperate in the investigation, the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108.

(c) The Executive Director is authorized to cause the issuance of subpoenas under the seal of the Superior Court of the District of Columbia compelling the complainant, the subject officer or officers, witnesses, and other persons to respond to written or oral questions, or to produce relevant documents or other evidence as may be necessary for the proper investigation and determination of a complaint. The service of any such subpoena on a subject police officer or any other employee of the MPD may be effected by service on the Police Chief or on his designee, who shall deliver the subpoena to the subject police officer or employee. The Police Chief or his designee shall transmit the return of service to the Office. Statements made pursuant to a subpoena shall be given under oath or affirmation.

(d) Employees of the MPD shall cooperate fully with the Office in the investigation and adjudication of a complaint. Upon notification by the Executive Director that an MPD employee has not cooperated as requested, the Police Chief shall cause appropriate disciplinary action to be instituted against the employee, and shall notify the Executive Director of the outcome of such action. An employee of the MPD shall not retaliate, directly or indirectly, against a person who files a complaint under this chapter. If a complaint of retaliation is sustained under this chapter, the subject police officer or employee shall be subject to appropriate penalty, including dismissal. Such disciplinary action shall not be taken with respect to an employee's invocation of the Fifth Amendment privilege against self-incrimination.

(e) When the investigator completes the investigation, the investigator shall summarize the results of the investigation in an investigative report which, along with the investigative file, shall be transmitted to the Executive Director. After reviewing the investigative report and the investigative file, the Executive Director may dismiss the complaint in accordance with §§ 5-1107 and 5-1108, may direct the investigator to undertake additional investigation, or may refer the complaint to a complaint examiner designated by the Executive Director to determine the merits of the complaint.

(f) Upon receiving a complaint, a complaint examiner may request that the Executive Director order additional investigation, may proceed to determine the merits of the complaint in a fair and expeditious manner based on the investigative report and the investigative file, or may hold an evidentiary hearing. If the complaint examiner determines that an evidentiary hearing is necessary to determine fairly the merits of a complaint, the testimony at such hearing shall be under oath or affirmation, and the parties may be represented by counsel. A complaint examiner shall have the authority to administer an oath or affirmation to a witness.

(g) If, after the Executive Director assigns a complaint to a complaint examiner, the parties indicate to the complaint examiner that they are willing to resolve the complaint through conciliation or mediation, the complaint examiner may act as a conciliator or mediator. If a party already is represented by counsel, that party may continue to be represented by counsel during this conciliation or mediation process. If one party is represented by counsel and the other party is not so represented, the complaint examiner shall, upon request, give the unrepresented party a reasonable time to obtain counsel before commencing the mediation or conciliation process. Any resulting written conciliation or mediation agreement may be confidential as provided in § 5-1110(h), and neither any such agreement nor any oral nor written statement made by a party during the course of the conciliation or mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(h) Upon review of the investigative file and the evidence adduced at any evidentiary hearing, and in the absence of the resolution of the complaint by conciliation or mediation, the complaint examiner shall make written findings of fact regarding all material issues of fact, and shall determine whether the facts found sustain or do not sustain each allegation of misconduct. In making that determination, the complaint examiner may consider any MPD regulation, policy, or order that prescribes standards of conduct for police officers. For purposes of this chapter, these written findings of fact and determinations by the complaint examiner (collectively, the “merits determination”) may not be rejected unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

(i) If the complaint examiner determines that one or more allegations in the complaint is sustained, the Executive Director shall transmit the entire complaint file, including the merits determination of the complaint examiner, to the Police Chief for appropriate action. If the complaint examiner determines that no allegation in the complaint is sustained, the Executive Director shall dismiss the complaint and notify the parties and the Police Chief in writing of such dismissal with a copy of the merits determination.

(Mar. 26, 1999, D.C. Law 12-208, § 12, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-921. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1112. Action by the Metropolitan Police Department.

(a) Upon receipt of a complaint file in which one or more allegations in a complaint has been sustained, the Police Chief shall cause the file to be reviewed within 5 working days after receiving the complaint file. This review shall not be conducted by persons from the same organizational unit as the subject police officer or officers. All persons conducting the review shall be senior in grade or rank to the subject police officer or officers.

(b) The review of the complaint file shall include a review of the personnel

file of the subject officer or officers, including any record of prior misconduct by the subject police officer or officers. Within 15 working days after receiving the complaint file from the Police Chief, the reviewing officers shall make a written recommendation, with supporting reasons, to the Police Chief regarding an appropriate penalty from the Table of Penalties Guide in General Order 1202.1 (Disciplinary Procedures and Processes). This recommendation may include a proposal for any additional action by the Police Chief not inconsistent with the intent and purpose of the citizen complaint review process.

(c) The review may include a proposal that the Police Chief return the merits determination to the Executive Director for review by a final review panel as set forth in subsection (g) of this section, if those charged with the review conclude, with supporting reasons, that, insofar as it sustains one or more allegations in the complaint, the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. The staff recommendation may not propose the supplementation of the evidentiary record before the complaint examiner.

(d) Within 5 working days after receiving the staff recommendation, the Police Chief shall notify the complainant and the subject police officer or officers in writing of the staff recommendation, and shall afford the complainant and the subject police officer or officers an opportunity to file with the Police Chief, within a reasonable time period set by the Police Chief, a written response to the staff recommendation. The Police Chief shall give full consideration to the written responses received from the complainant and the subject police officer or officers before taking final action with regard to the complaint.

(e) Within 15 working days after receiving the written responses of the complainant and the subject officer or officers, or within 15 working days of the deadline set for receipt of such responses, whichever is earlier, the Police Chief shall issue a decision as to the imposition of discipline upon the subject police officer or officers. The decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief may not reject the merits determination, in whole or in part, unless the Police Chief concludes, with supporting reasons, that the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in the record before the complaint examiner. The Police Chief may not supplement the evidentiary record.

(f) The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken by the Police Chief, and shall include in such notice a copy of the decision.

(g) The decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in § 5-1114(f), except in the following circumstances:

(1) The Police Chief may reopen any closed matter in the interests of fairness and justice; or

(2) If the Police Chief concludes on the basis of a staff recommendation under subsection (c) of this section, or otherwise, that insofar as it sustains one

or more allegations of the complaint, the merits determination clearly misapprehends the record before the complaint examiner, and is not supported by substantial, reliable, and probative evidence in the record, the Police Chief shall return the merits determination to the Executive Director for review by a final review panel comprised of 3 complaint examiners (not including the complaint examiner who prepared the merits determination) selected by the Executive Director. Upon review of the record, and without taking any additional evidence, the final review panel shall issue a written decision, with supporting reasons, regarding the correctness of the merits determination to the extent that the Police Chief has concluded that it erroneously sustained one or more allegations of the complaint. The final review panel shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. A copy of the decision of the final review panel shall be transmitted to the Executive Director, the complainant, the subject police officer or officers, and the Police Chief.

(h) If the final review panel concludes that the merits determination sustaining one or more allegations of the complaint should be reversed in its entirety, the Executive Director shall dismiss the complaint, and notify the parties and the Police Chief in writing of such dismissal. If the final review panel concludes that the merits determination should be upheld as to any allegation of the complaint that the determination has sustained, the Police Chief, within 15 working days of receipt of the panel's decision, shall issue a supplemental decision as to the imposition of discipline upon the subject officer or officers that is fully consistent with the panel's decision. The supplemental decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken by the Police Chief, and shall include in such notice a copy of the supplemental decision. The supplemental decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in subsection (g) of this section and § 5-1114(f).

(Mar 26, 1999, D.C. Law 12-208, § 13, 45 DCR 8107; Apr. 12, 2000, D.C. Law 13-91, § 137, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 4-922.

Effect of amendments. — D.C. Law 13-91, in the last sentence of subsec. (h), substituted "subsection (g) of this section" for "section 13(g)".

Legislative history of Law 12-208. — For legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999,"

was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 5-1113. Effect of order dismissing complaint.

(a) An order of the Executive Director dismissing a complaint shall be a final resolution of the complaint by the Office. Such order shall be neither appealable to nor reviewable by any other entity, administrative or judicial.

(b) An order of the Executive Director dismissing a complaint for any reason, including a dismissal based upon an adjudication of the merits of a complaint by a complaint examiner and a decision of a final review panel that reverses a merits determination of a complaint examiner, shall not bar the complainant from seeking any judicial relief that may be available pursuant to the statutory and common law of the District of Columbia.

(Mar. 26, 1999, D.C. Law 12-208, § 14, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-923. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1114. Metropolitan Police Department disciplinary authority.

(a) The MPD shall have full authority, under the procedures established pursuant to § 5-133.06, to initiate disciplinary proceedings against an officer of the MPD with respect to a charge of misconduct within the scope of § 5-1107 prior to the timely filing of a complaint with the Office.

(b) If the MPD has initiated disciplinary proceedings against an officer of the MPD for alleged misconduct, the subsequent timely filing with the Office of a complaint against the same officer or officers, alleging the same misconduct, shall not preclude the MPD from proceeding with its own disciplinary process. Nor shall the fact that the MPD has initiated disciplinary proceedings against a police officer for alleged misconduct preclude the Office from processing a complaint that was timely filed against the same officer and alleging the same misconduct, except that the Police Chief may not punish the same officer more than once for the same act or omission that constitutes misconduct.

(c) When the MPD has not initiated a disciplinary proceeding against a police officer prior to the timely filing of a complaint with the Office, the MPD shall not initiate a disciplinary proceeding against the subject police officer or officers with regard to misconduct alleged in such complaint until the Office disposes of the complaint.

(d) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, that no allegation of misconduct in the complaint is sustained, as well as a decision of a final review panel that reverses in its entirety a merits determination that sustained one or more allegations of the complaint, precludes the MPD from imposing discipline on the subject police officer or officers with respect to any allegation of misconduct contained in the complaint.

(e) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, or a later decision of a final review panel, if any, shall be binding on the subject police officer or officers and on the Police Chief in all

subsequent proceedings as to all essential facts determined and all violations found.

(f) If the complaint examiner has not held an evidentiary hearing and the Police Chief imposes termination as a disciplinary action, the affected police officer shall be entitled to a post-termination administrative proceeding as provided by law. A police officer disciplined by the Police Chief, whether by termination or otherwise, shall be entitled to whatever administrative disciplinary proceeding is afforded under any applicable collective bargaining agreement.

(Mar. 26, 1999, D.C. Law 12-208, § 15, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-924. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

§ 5-1115. Funding and compensation.

(a) There are authorized such funds as may be necessary to support the Board and the Office.

(b) The establishment of the Board and the Office are dependent upon the availability of appropriated funds.

(c) Any entitlement to compensation under this chapter for services rendered shall be dependent upon the availability of appropriated funds to pay such compensation.

(Mar. 26, 1999, D.C. Law 12-208, § 16, 45 DCR 8107.)

Prior Codifications. — 1981 Ed., § 4-925. legislative history of D.C. Law 12-208, see Historical and Statutory Notes following § 5-1101.
Legislative history of Law 12-208. — For

Subchapter II. Civilian Complaint Review Board.

§ 5-1131. Established; purpose; authority to act. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 2, 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-901.

Emergency legislation. — For temporary repeal of chapter upon the effective date of the Omnibus Budget Support Act of 1995, see § 503(a) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 803(a) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 3-158. — Law 3-158, the "District of Columbia Civilian Complaint Review Board Act of 1980," was introduced in Council and assigned Bill No. 3-247,

which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980, and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the

Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Effective date. — Section 803(a) of D.C. Law 11-52 repealed §§ 5-1131 to 5-1140 on the effective Dates of the Omnibus Budget Support Act of 1995. The Omnibus Budget Support Act of 1995, D.C. Law 11-52, was effective September 26, 1995.

Delegation of Authority. — Delegation of Authority—Secretary of the District of Columbia, see Mayor's Order 95-26, January 27, 1995.

Editor's notes. — Transfer of pending cases: For temporary transfer of all cases pending with the Civilian Complaint Review Board to

the Internal Affairs Division of the Metropolitan Police Department, see § 503(b) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 803(b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 803(b) of D.C. Law 11-52 provided that all cases pending with the Civilian Complaint Review Board on the effective date of the Omnibus Budget Support Act of 1995 shall be transferred to, and adjudicated according to the procedures of, the Internal Affairs Division of the Metropolitan Police Department.

§ 5-1132. Recommendations. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 3, 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-902.

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 11-52. — For

legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1133. Adjudication of complaints; rules and regulations; action by Chief of Police. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 4, 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Section references. — This section is referred to in § 5-1132.

Prior Codifications. — 1981 Ed., § 4-903.

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1134. Composition; term of office; quorum; removal for cause. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 5, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(a), 39 DCR 8075; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-904.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board Emergency Amend-

ment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board

Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 9-179. — Law 9-179, the "Civilian Complaint Review Board Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-443, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respec-

tively. Signed by the Mayor on October 23, 1992, it was assigned Act No. 9-298 and transmitted to both Houses of Congress for its review. D.C. Law 9-179 became effective on March 13, 1993.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

Editor's notes. — Expiration of § 2(a)(5) of Law 9-179: Section 3(b) of D.C. Law 9-179 provided that § 2(a)(5) of the act shall expire 3 years from the effective date of the Civilian Complaint Review Board Amendment Act of 1992.

§ 5-1135. Hearings. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 6, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(b), 39 DCR 8075; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-905.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 9-179. — For legislative history of D.C. Law 9-179, see Historical and Statutory Notes following § 5-1134.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1136. Liability of Board members. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 7, 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-906.

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 11-52. — For

legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1137. Executive Director; staff. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 8, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(c), 39 DCR 8075; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-907.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 9-179. — For legislative history of D.C. Law 9-179, see Historical and Statutory Notes following § 5-1134.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1138. Funding. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 9, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(d), 39 DCR 8075; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-908.

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 9-179. — For legislative history of D.C. Law 9-179, see Historical and Statutory Notes following § 5-1134.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1139. Miscellaneous provisions. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 10(a)-(e), (g), (h), 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-909.

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 11-52. — For

legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

§ 5-1140. Construction of chapter. [Repealed].

Repealed.

(Mar. 5, 1981, D.C. Law 3-158, § 11, 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 4-910.

Legislative history of Law 3-158. — For legislative history of D.C. Law 3-158, see Historical and Statutory Notes following § 5-1131.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 5-1131.

Effective date. — Section 12 of D.C. Law 3-158 provided that: "This chapter shall take effect after a 30-day period of Congressional

review following approval by the Mayor (or in the event of veto by the Mayor action by the Council of the District of Columbia to override the veto as provided in § 1-233(c)(1)); Provided, that this chapter shall not take effect prior to October 1, 1981, at which time complaints may be made to the Board."

For effective date of repeal of §§ 5-1131 to 5-1140, see Historical and Statutory Notes following § 5-1131.

CHAPTER 12. REGISTRATION OF STATE OFFICIALS ENTERING DISTRICT.

Sec.

5-1201. Definitions.

5-1202. Registration; exception; certificates;

civil fine; regulations; void and prohibited certificates.

§ 5-1201. Definitions.

For purposes of this chapter:

(1) "State" means the several states of the United States, Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(1-a) "State agent" means any person compensated directly or indirectly by a state or who in any way assists in the administration of the enforcement of laws of a state relating to alcoholic beverages, tobacco, or tobacco products.

(2) "State official" means any agent, employee, or representative officially responsible for the administration and enforcement of laws of a state relating to alcoholic beverages, tobacco, and tobacco products.

(Sept. 9, 1978, D.C. Law 2-102, § 2, 25 DCR 303; July 25, 1985, D.C. Law 6-12, § 2(a), 32 DCR 3232.)

Prior Codifications. — 1981 Ed., § 4-1001. 1973 Ed., § 4-1101.

Legislative history of Law 2-102. — Law 2-102, the "State Revenue Officers Registration Act of 1978," was introduced in Council and assigned Bill No. 2-45, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978, and May 16, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-212 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-12. — Law 6-12, the "State Revenue Officers Amendment Act of 1985," was introduced in Council and assigned Bill No. 6-86, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively. Signed by the Mayor on May 30, 1985, it was assigned Act No. 6-26 and transmitted to both Houses of Congress for its review.

§ 5-1202. Registration; exception; certificates; civil fine; regulations; void and prohibited certificates.

(a) Notwithstanding any other law or provision of law, including any executive agreements or understandings, any state official coming into the District of Columbia: (1) to enforce that state's laws relating to tobacco or tobacco products, including any law levying a tax on tobacco or tobacco products; or (2) to conduct an investigation or surveillance or cause to be surveilled activities done in the District of Columbia relating to a possible violation of the laws of that state, shall first register with the Chief of the Metropolitan Police Department of the District of Columbia (hereinafter referred to as the "Chief"). Such state official shall first register in person with the Chief 72 hours in advance of each such entry into the District of Columbia. Such state official shall, in addition, provide to the Chief a written statement setting forth the identity of such state official, the purpose of his intended entry into the District of Columbia, and the time(s) and place(s) at which such state official will be present in the District of Columbia for such purpose. Any person who registers shall be issued a certificate of registration which must be

retained in the possession of the person during all investigative or surveillance activities. No state official or state agent shall be allowed to come into the District of Columbia to enforce that state's laws relating to alcoholic beverages, including any law levying a tax on alcoholic beverages, or to conduct an investigation or surveillance of a retail liquor establishment or cause to be surveilled activities done in the District of Columbia relating to a possible violation of that state's law relating to the importation of alcoholic beverages.

(b) This section shall not apply to any state law-enforcement officer who enters the District of Columbia lawfully in hot pursuit of a person suspected of having committed a crime, or to any state law-enforcement officer entering the District of Columbia solely for the purpose of conducting business with either the federal or the District of Columbia government.

(c) Any state official or state agent found to be in violation of this section shall be subject to a civil fine of up to \$300 for each violation.

(c-1) After July 25, 1985, certificates issued pursuant to subsection (a) of this section for investigating a retail liquor establishment shall become void and the Chief shall not grant certificates to permit investigations in the District of Columbia in order to enforce out-of-state liquor laws.

(d) Pursuant to subchapter I of Chapter 5 of Title 2, the Chief shall promulgate such regulations as are necessary to carry out the provisions of this chapter.

(Sept. 9, 1978, D.C. Law 2-102, § 3, 25 DCR 303; Mar. 10, 1983, D.C. Law 4-198, § 2, 30 DCR 117; July 25, 1985, D.C. Law 6-12, § 2(b), (c), 32 DCR 3232.)

Prior Codifications. — 1981 Ed., § 4-1002. 1973 Ed., § 4-1102.

Legislative history of Law 2-102. — For legislative history of D.C. Law 2-102, see Historical and Statutory Notes following § 5-1201.

Legislative history of Law 4-198. — Law 4-198, the "State Revenue Officers Registration Improvements Act of 1982," was introduced in Council and assigned Bill No. 4-493, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-282 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-12. — For legislative history of D.C. Law 6-12, see Historical and Statutory Notes following § 5-1201.

CHAPTER 13. MISCELLANEOUS PROVISIONS.

Subchapter I. General Provisions

Sec.

- 5-1301. Memorial fountain to members of Metropolitan Police Department.
- 5-1302. Service in Armed Forces — Seniority rights.
- 5-1303. Service in Armed Forces — Rank or grade preserved; restriction on compensation.
- 5-1304. Basic workweek established; overtime; special assignments; court duty.
- 5-1305. Payment of certain tuition expenses.
- 5-1306. Protection of emergency 2-way radio communications — Definition.

Sec.

- 5-1307. Protection of emergency 2-way radio communications — Unlawful acts.
- 5-1308. Protection of emergency 2-way radio communications — Penalties.
- 5-1309. Protection of emergency 2-way radio communications — Forfeiture of equipment.

Subchapter II. Law Enforcement Officers Memorial

- 5-1331. Establishment.
- 5-1332. Design and construction.
- 5-1333. Expenses.

Subchapter I. General Provisions.

§ 5-1301. Memorial fountain to members of Metropolitan Police Department.

The Mayor of the District of Columbia is authorized and directed to accept and maintain for the District of Columbia the gift of a memorial fountain to the members of the Metropolitan Police Department; provided, that the design and model of the memorial fountain are approved by the Commission of Fine Arts, and thereafter erected at a location to be approved by the Mayor of the District of Columbia and the National Capital Planning Commission on land now owned by the District of Columbia, for the Municipal Center.

(Apr. 22, 1940, 54 Stat. 157, ch. 136.)

Prior Codifications. — 1981 Ed., § 4-1101. 1973 Ed., § 4-901.

Transfer of Functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-1302. Service in Armed Forces — Seniority rights.

(a) Any officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia, who served in the Armed Forces of the United States during the period beginning May 1, 1940, and ending December 31, 1946, and: (1) whose name appeared during such service (as a result of a regular or reopened competitive examination for promotion) on any civil

service register with respect to such force or Department for promotion to a higher rank or grade; or (2) whose name appeared on such a register as a result of a reopened examination taken subsequent to his release, shall, for the purpose of determining his seniority rights and service in such rank or grade, be held to have been promoted to such rank or grade as of the earliest date on which an eligible standing lower on the same promotion register received a promotion either permanently or temporarily to such rank or grade.

(b) No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall be entitled to the benefits of this section who has reenlisted after June 1, 1945, in the Regular Army or Air Force or after February 1, 1945, in the Regular Navy.

(July 1, 1947, 61 Stat. 240, ch. 193, § 1.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in § 5-

Prior Codifications. — 1981 Ed., § 4-1102.
1973 Ed., § 4-902.

§ 5-1303. Service in Armed Forces — Rank or grade preserved; restriction on compensation.

No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall, by reason of the enactment of § 5-1302, be:

- (1) Reduced in rank or grade; or
- (2) Entitled to any compensation for any period prior to July 1, 1947.

(July 1, 1947, 61 Stat. 240, ch. 193, § 2.)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-1103.
1973 Ed., § 4-903.

§ 5-1304. Basic workweek established; overtime; special assignments; court duty.

(a) For purposes of this section, the following definitions apply, unless the context requires otherwise:

(1) "Authorizing official" means the Mayor of the District of Columbia in the cases of the Metropolitan Police force and the Fire Department of the District of Columbia, and the Secretary of the Interior in the case of the United States Park Police force.

(2) "Administrative workweek" means a period of 7 consecutive calendar days.

(3) "Basic workweek" means a 40-hour workweek, excluding roll-call time, in the case of officers and members of the police forces specified in this section; a 40-hour workweek in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and

an average workweek of 48 hours in the case of officers and members of the Firefighting Division of the District of Columbia Fire Department.

(4) "Basic workday" means an 8-hour day excluding roll-call time in the case of officers and members of the police forces specified in this section; an 8-hour day in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and an average 12-hour workday in the case of officers and members of the Firefighting Division.

(5)(A) "Off-duty days" means the nonwork days which, when combined with the basic workdays, make up the administrative workweek.

(B) "Off-duty time" means the time in any basic workday outside the regular tour of an officer or member's duty.

(6) "Roll-call time" means that time, not exceeding one-half hour each workday, which is in addition to each basic workday of the basic workweek for reading of rolls and other preparation for the daily tour of duty.

(7) "Rate of basic compensation" means the rate of compensation fixed by law for the position held by an officer or member exclusive of any deductions or additional compensation of any kind.

(8) "Premium pay" means compensation not considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under subchapter I of Chapter 7 of this title.

(9) "Officer or member" means any employee in the Metropolitan Police force or the Fire Department of the District of Columbia, or the United States Park Police force, whose compensation is fixed and adjusted in accordance with subchapter III of Chapter 5 of this title.

(10) "Court duty" means attendance by an officer or member in his official capacity, excluding his appearance as a defendant, at court or at a quasi-judicial hearing.

(11) "Special event" or "special assignment" means any planned activity or function which the authorizing official designates in advance as such.

(b) The Mayor of the District of Columbia, or the Secretary of the Interior, as the case may be, is authorized and directed to establish a basic workweek of 40 hours to be scheduled on 5 days for the respective police forces referred to in this section; provided, that roll-call time shall be without compensation or credit to the time of the basic workweek.

(c) All officially ordered or approved hours of work (except roll-call time) performed by officers and members in excess of the basic workweek in any administrative workweek, shall be considered as overtime work and shall be compensated for as provided by this section.

(d)(1) Whenever the authorizing official designates an activity or function as a special event, or special assignment, all overtime work in connection with such special event, or special assignment, shall be compensated for by payment as follows:

(A) For each officer or member who receives compensation at a rate provided for in class 1 through class 4, in subchapter III of Chapter 5 of this title, the overtime work shall be compensated for by payment at one and one-half times the basic hourly rate of such officer or member and all such compensation shall be considered premium pay.

(B) For each officer or member who receives compensation at a rate provided for classes 5 and above, in subchapter III of Chapter 5 of this title, the overtime work shall be compensated for by payment at the basic hourly rate of such officer or member's basic compensation (except as otherwise limited by subsection (h)(1) and (2) of this section) and all such compensation shall be considered premium pay.

(2) An officer or member may elect to receive compensatory time off as provided in subsection (f) of this section in lieu of payment for overtime work as provided in this subsection.

(e) Each officer or member who on any off-duty time performs court duty (excluding the 1st appearance in court on each case), or who performs work, as ordered or approved, on any off-duty day shall be compensated in accordance with subsection (d) of this section.

(f)(1) Overtime work, other than that for which compensation by payment or time off is provided by subsections (d) and (e) of this section, shall be compensated for by compensatory time off at a rate of 1 hour of compensatory time for each hour of overtime work performed. Such compensatory time off shall be granted in accordance with the following provisions:

(A) The authorizing official, or such person as he may designate to act in his place, may, at the request of any officer or member, grant such officer or member compensatory time off from his scheduled tour of duty in lieu of payment for an equal amount of time spent for overtime work, including the 1st appearance for court duty in each case, if to grant such leave would not unreasonably diminish the number of officers or members available to maintain law, order, and public safety.

(B) Any officer or member who is eligible for compensatory time off and has made application for such compensatory time off, which application was denied, may within 30 days of such denial make application for compensatory pay at his basic hourly rate of basic compensation and all such compensation shall be considered premium pay.

(C) Such compensatory time off shall be used within such period of time as the authorizing official shall prescribe. If such officer or member fails to take such compensatory time off within the prescribed period, he shall thereby waive all right to such compensatory time off, unless his failure to take such compensatory time off is due to an official denial of his request for such compensatory time off.

(2) Such overtime work shall be credited for purposes of compensation in multiples of 1 hour, rounded to the nearest hour in case of fractions thereof. Thirty minutes or more of any such hour shall be credited as 1 hour.

(g)(1) Whenever any officer or member is authorized or directed to return to overtime duty at a time which is not an immediate continuation of his regular tour of duty, such officer or member shall receive credit for not less than 2 hours of overtime work for purposes of compensation under this section.

(2) Overtime work resulting from the immediate continuation of an officer's or member's regular tour of duty which, excluding roll-call time, is 30 minutes or more in excess of the basic workday shall be credited for purposes of compensation under subsection (f) of this section.

(h)(1) No premium pay provided by this section shall be paid to, and no compensatory time off is authorized for, an officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia whose rate of basic compensation equals or exceeds the minimum scheduled rate of basic compensation provided for service step 1 in the salary class applicable to the Fire Chief and Chief of Police in subchapter III of Chapter 5 of this title.

(2) In the case of an officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia whose rate of basic compensation is less than the minimum scheduled rate of basic compensation provided for service step 1 in the salary class applicable to the Fire Chief and Chief of Police in subchapter III of Chapter 5 of this title, such premium pay may be paid only to the extent that such payment would not cause his aggregate rate of compensation to exceed such minimum scheduled rate with respect to any pay period.

(3)(A) No premium pay provided by this section shall be paid to, and no compensatory time is authorized for, any officer or member of the United States Park Police whose rate of basic pay, combined with any applicable locality-based comparability payment, equals or exceeds the lesser of:

(i) One hundred-fifty percent of the minimum rate payable for grade GS-15 of the General Schedule (including any applicable locality-based comparability payment under section 5304 of title 5, United States Code or any similar provision of law, and any applicable special rate of pay under section 5305 of title 5, United States Code or any similar provision of law); or

(ii) The rate of payable for level V of the Executive Schedule contained in subchapter II of chapter 3 of title 5, United States Code.

(B) In the case of any officer or member of the United States Park Police whose rate of basic pay, combined with any applicable locality-based comparability payment, is less than the lesser of—

(i) One hundred-fifty percent of the minimum rate payable for grade GS-15 of the General Schedule (including any applicable locality-based comparability payment under section 5304 of title 5, United States Code or any similar provision of law, and any applicable special rate of pay under section 5305 of title 5, United States Code or any similar provision of law); or

(ii) The rate payable for level V of the Executive Schedule contained in subchapter II of chapter 53 of title 5, United States Code, such premium pay may be paid only to the extent that such payment would not cause such officer or member's aggregate rate of compensation to exceed such lesser amount with respect to any pay period.

(i) Each authorizing official is authorized to promulgate such regulations and issue such orders as are necessary to carry out the intent and purpose of this section, and to delegate to a designated agent or agents any of the functions vested in the authorizing official by this section.

(Aug. 15, 1950, 64 Stat. 447, ch. 715, § 1; Mar. 27, 1951, 65 Stat. 27, ch. 20, § 1; June 20, 1953, 67 Stat. 76, ch. 146, title IV, § 403; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 1; Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 3; Oct. 21, 1965, 79 Stat. 1013, Pub. L. 89-282, § 1; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410,

title I, § 113; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 10, 1997, 111 Stat. 1285, Pub. L. 105-61, § 118(c); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 903(c); Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(6).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Section references. — This section is referred to in § 5-521.01.

Prior Codifications. — 1981 Ed., § 4-1104. 1973 Ed., § 4-904.

Effect of amendments. — Pub. L. 111-282, in subsec. (a)(1), inserted “and” preceding “the Secretary” and deleted “, and the Secretary of the Treasury in the case of the United States Secret Service Uniformed Division” following “Park Police Force”; in subsec. (a)(9), inserted “or” preceding “the United States Park Police force” and deleted “or the United States Secret Service Uniformed Division” following “Park Police Force”; in subsec. (b), inserted “or” preceding “the Secretary of the Interior” and deleted “or the Secretary of the Treasury,” following “Interior”; and, in subsecs. (h)(3)(A) and (B), deleted “of the United States Secret Service Uniformed Division or” following “member of”.

Effective date. — Section 118(f) of Pub. L. 105-61, 111 Stat. 1272, provided that the provisions of § 118 shall become effective on the first day of the first pay period beginning after the Dates of enactment of the act. The act was approved on October 10, 1997.

Editor's notes. — Savings Provision: Section 118(d) of Pub. L. 106-61, 111 Stat. 1285, provided that on the effective date of § 118, any existing special salary rates authorized for

members of the United States Secret Service Uniformed Division under § 5305 of title 5, United States Code (or any previous similar provision of law) and any special rates of pay or special pay adjustments under section 403, 404, or 405 of the Federal Law Enforcement Pay Reform Act of 1990 applicable to members of the United States Secret Service Uniformed Division shall be rendered inapplicable.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Stipends.

The \$595 annual stipend under District of Columbia statute for detective sergeants was part of plaintiffs' regular pay rate and had to be included in FLSA overtime calculation; District contended that stipend was not part of their basic compensation but rather was additional payment that should not be so included, but

FLSA mandated that regular rate include all remuneration for employment paid to, or on behalf of, employee unless it fell under one of eight expressly provided exclusions and District did not reference the exemptions, let alone argue that one of them applied to situation. *Figueroa v. District of Columbia*, 2012 WL 2367088 (2012).

§ 5-1305. Payment of certain tuition expenses.

If an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, or the United States Park Police force engages in educational course work in police or fire science or administration, and, if he is eligible for payments or reimbursements under § 4109(a)(2)(C) of Title 5 of the United States Code for tuition expenses for such course work, the Mayor of the District of Columbia and the Secretary of the Interior shall, in accordance with

such § 4109(a)(2)(C), pay or reimburse each such officer and member under their jurisdiction for all his tuition expenses for such course work.

(Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title I, § 117(a); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(7).)

Cross references. — Merit system, application to police officers and firefighters, see § 1-632.03.

Prior Codifications. — 1981 Ed., § 4-1105. 1973 Ed., § 4-910.

Effect of amendments. — Pub. L. 111-282 deleted “the United States Secret Service Uniformed Division,” following “Columbia”; and deleted “the Secretary of the Treasury,” following “Columbia”.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 5-1306. Protection of emergency 2-way radio communications — Definition.

For the purpose of §§ 5-1306 to 5-1309, “emergency” means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting a communication referred to in § 5-1307 to be in imminent danger of death or serious bodily harm or in which property is in imminent danger of damage or destruction.

(Apr. 11, 1986, D.C. Law 6-105, § 2, 33 DCR 1162.)

Section references. — This section is referred to in §§ 5-1308 and 5-1309.

Prior Codifications. — 1981 Ed., § 4-1106.

Legislative history of Law 6-105. — Law 6-105, the “Protection of Emergency 2-Way Radio Communications Act of 1985,” was introduced in Council and assigned Bill No. 6-308, which was referred to the Committee on the

Judiciary. The Bill was adopted on first and second readings on January 14, 1986, and January 28, 1986, respectively. Approved without the signature of the Mayor on February 14, 1986, it was assigned Act No. 6-134 and transmitted to both Houses of Congress for its review.

§ 5-1307. Protection of emergency 2-way radio communications — Unlawful acts.

It shall be unlawful for any person to do the following:

(1) Knowingly, intentionally, recklessly, or with culpable negligence interrupt, disrupt, impede, or otherwise interfere with the transmission of a 2-way radio communication, the purpose of which is to inform or to inquire about an emergency; or

(2) Knowingly, intentionally, recklessly, or with culpable negligence transmit false information about an emergency on any 2-way radio frequency.

(Apr. 11, 1986, D.C. Law 6-105, § 3, 33 DCR 1162.)

Section references. — This section is referred to in §§ 5-1306, 5-1308, and 5-1309.

Prior Codifications. — 1981 Ed., § 4-1107.

Legislative history of Law 6-105. — For legislative history of D.C. Law 6-105, see Historical and Statutory Notes following § 5-1306.

§ 5-1308. Protection of emergency 2-way radio communications — Penalties.

Any person who violates any provision of §§ 5-1306 to 5-1309, upon conviction, shall be subject to a fine of not more than \$500 or imprisonment of not more than 90 days, or both.

(Apr. 11, 1986, D.C. Law 6-105, § 4, 33 DCR 1162.)

Section references. — This section is referred to in §§ 5-1306 and 5-1309.

Prior Codifications. — 1981 Ed., § 4-1108.

Legislative history of Law 6-105. — For legislative history of D.C. Law 6-105, see Historical and Statutory Notes following § 5-1306.

§ 5-1309. Protection of emergency 2-way radio communications — Forfeiture of equipment.

(a) Any 2-way radio and related equipment used to commit a violation of §§ 5-1306 to 5-1309 shall be subject to forfeiture.

(b) Property subject to forfeiture under §§ 5-1306 to 5-1309 may be seized by law-enforcement officials, as designated by the Mayor, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(Apr. 11, 1986, D.C. Law 6-105, § 5, 33 DCR 1162.)

Section references. — This section is referred to in §§ 5-1106 and 5-1308.

Prior Codifications. — 1981 Ed., § 4-1109.

Legislative history of Law 6-105. — For legislative history of D.C. Law 6-105, see Historical and Statutory Notes following § 5-1306.

Subchapter II. Law Enforcement Officers Memorial.

§ 5-1331. Establishment.

The National Law Enforcement Officers Memorial Fund, Inc., is authorized to establish the National Law Enforcement Heroes Memorial on federal land in the District of Columbia or its environs to honor law enforcement officers who die in the line of duty.

(May 23, 1989, D.C. Law 8-2, § 2, 36 DCR 2371.)

Prior Codifications. — 1981 Ed., § 4-1121.

Legislative history of Law 8-2. — Law 8-2, the "Law Enforcement Officers Memorial Act of 1989," was introduced in Council and assigned Bill No. 8-91, which was referred to the Committee on Public Works. The Bill was adopted

on first and second readings on February 28, 1989 and March 14, 1989, respectively. Signed by the Mayor on March 29, 1989, it was assigned Act No. 8-12 and transmitted to both Houses of Congress for its review.

§ 5-1332. Design and construction.

(a) The Mayor shall obtain and review the design and plans for the

memorial and, after consultation with the Council and the Joint Committee on Judicial Administration of the District of Columbia Courts, transmit recommendations to the Secretary of the Interior, the Commission of Fine Arts, and the National Capital Planning Commission before approval of the design, plans, and construction of the memorial in accordance with the Joint Resolution Authorizing the Law Enforcement Officers Memorial Fund to establish a memorial in the District of Columbia or its environs, approved October 19, 1984 (98 Stat. 2712) ("Joint Resolution").

(b) Construction shall not commence until the Secretary of the Interior determines that sufficient funds are available for the completion of the memorial in accordance with the Joint Resolution.

(c) Construction shall commence no later than October 19, 1989, as provided in the Joint Resolution.

(May 23, 1989, D.C. Law 8-2, § 3, 36 DCR 2371.)

Prior Codifications. — 1981 Ed., § 4-1122. legislative history of D.C. Law 8-2, see Historical and Statutory Notes following § 5-1331.
Legislative history of Law 8-2. — For

§ 5-1333. Expenses.

The District of Columbia shall not pay any expenses of the establishment or maintenance of the memorial.

(May 23, 1989, D.C. Law 8-2, § 4, 36 DCR 2371.)

Prior Codifications. — 1981 Ed., § 4-1123. legislative history of D.C. Law 8-2, see Historical and Statutory Notes following § 5-1331.
Legislative history of Law 8-2. — For

CHAPTER 14. CHIEF MEDICAL EXAMINER.

Sec.

- 5-1401. Definitions.
- 5-1402. Establishment of the Office, of the Chief Medical Examiner; appointments, qualifications, and compensation.
- 5-1403. Supporting services and facilities.
- 5-1404. Former duties of coroner; oaths; teaching; other duties.
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- 5-1408. Possession of evidence and property.

Sec.

- 5-1409. Examination; further investigation and autopsy.
- 5-1410. Autopsy by pathologist other than a medical examiner.
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- 5-1415. [Repealed].
- 5-1416. Personnel, records, functions, and authority transferred.
- 5-1417. Regulations and fees.
- 5-1418. Office of the Chief Medical Examiner Management Fund. [Repealed].

§ 5-1401. Definitions.

For the purposes of this chapter, the term:

- (1) “District” means the District of Columbia.
- (2) “Legal custody” includes imprisonment, jail, or detention.
- (3) “Ward” means any person in the official custody of the District government, on a temporary or permanent basis, because of neglect, abuse, mental illness or mental retardation.

(Oct. 19, 2000, D.C. Law 13-172, § 2902, 47 DCR 6308.)

Emergency legislation. — For temporary (90 day) addition of applicability provision, see § 2920 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) addition of section, see § 2902 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Mayor’s Orders. — Autopsies of Deceased Clients of the Mental Retardation and Developmental Disability Administration, see Mayor’s Order 2004-76, May 13, 2004 (51 DCR 5278).

Autopsies of Deceased Consumers of the Mental Retardation and Developmental Disabilities Administration, see Mayor’s Order 2006-123, September 28, 2006 (53 DCR 9314).

§ 5-1402. Establishment of the Office of the Chief Medical Examiner; appointments, qualifications, and compensation.

(a) There is established as a subordinate agency in the executive branch of the government of the District of Columbia, the Office of the Chief Medical Examiner (“OCME”).

(b) The Mayor shall nominate, with the advice and consent of the Council, a person to serve as the Chief Medical Examiner (“CME”) within the OCME pursuant to § 1-523.01(a). The CME shall be responsible for the management

and operation of the OCME. The CME shall appoint a Deputy CME and any other medical examiners the CME finds necessary to carry out the duties of the OCME.

(c)(1) The CME, the Deputy CME, and any medical examiners appointed pursuant to subsection (b) of this section shall be physicians licensed to practice medicine in the District of Columbia.

(2) Except as provided in paragraph (3) of this subsection, the CME, the Deputy CME, and any medical examiners appointed after October 19, 2000, shall be certified in forensic pathology by the American Board of Pathology or be eligible for such certification.

(3) The certification requirement of paragraph (2) of this subsection may be waived by the Mayor for the CME appointed to fill the term beginning on May 1, 2007, and ending on April 30, 2013.

(d) The Mayor shall fix the compensation of the CME pursuant to subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.]. The Mayor shall fix the compensation of all medical examiners appointed by the CME pursuant to this section.

(e) The CME shall be appointed for a 6-year term.

(f) If a vacancy in the position of Chief Medical Examiner occurs as a consequence of resignation, disability, death, or a reason other than the expiration of the term of the Chief Medical Examiner, the Mayor shall appoint a replacement to fill the unexpired term in the same manner provided in § 1-523.01(a). A person appointed to fill the unexpired term shall serve only for the remainder of the term.

(Oct. 19, 2000, D.C. Law 13-172, § 2903, 47 DCR 6308; Apr. 12, 2005, D.C. Law 15-339, § 2, 52 DCR 2283; Mar. 20, 2008, D.C. Law 17-115, § 2, 55 DCR 1278; Dec. 10, 2009, D.C. Law 18-88, § 203, 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 11-2301.

Effect of amendments. — D.C. Law 15-339 rewrote subsec. (c); and added subsec. (f). Prior to amendment, subsec. (c) read as follows: “(c) The CME, the Deputy CME, and any medical examiners appointed pursuant to subsection (b) of this section shall be physicians licensed to practice medicine in the District of Columbia. The CME, the Deputy CME, and any medical examiners appointed after the effective date of this chapter shall be certified in forensic pathology by the American Board of Pathology or be eligible for such certification.”

D.C. Law 17-115 rewrote subsec. (c) which had read as follows: “(c) The CME, the Deputy CME, and any medical examiners appointed pursuant to subsection (b) of this section shall be physicians licensed to practice medicine in the District of Columbia. The CME, the Deputy CME, and any medical examiners appointed after October 19, 2000, shall be certified in forensic pathology by the American Board of Pathology or be eligible for such certification, except that the Mayor may waive the certifica-

tion requirement for any individual appointed as CME to fill the unexpired term ending on April 30, 2007.”

D.C. Law 18-88 rewrote subsec. (c)(3), which had read as follows: “(3) The certification requirement of paragraph (2) of this subsection may be waived by the Mayor until October 1, 2008 for the CME. Any individual appointed as the CME to fill the term beginning on May 1, 2007, and ending on April 30, 2013, pursuant to this waiver shall not be eligible to serve as CME after October 1, 2008, and shall not be eligible to serve in a holdover status after October 1, 2008, unless he or she meets the certification requirement.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Temporary Amendment Act of 2007 (D.C. Law 17-70, January 23, 2008, law notification 55 DCR 1450).

Section 2 of D.C. Law 17-335 amended subsec. (c)(3) to read as follows: “(3) The certification requirement of paragraph (2) of this subsection may be waived by the Mayor for the

CME appointed to fill the term beginning on May 1, 2007 and ending on April 30, 2013.”

Section 4(b) of D.C. Law 17-335 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 2903 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Emergency Amendment Act of 2004 (D.C. Act 15-643, December 20, 2004, 51 DCR 11833).

For temporary (90 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Emergency Amendment Act of 2007 (D.C. Act 17-136, October 17, 2007, 54 DCR 10725).

For temporary (90 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-253, January 23, 2008, 55 DCR 1266).

For temporary (90 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Emergency Amendment Act of 2008 (D.C. Act 17-600, December 12, 2008, 56 DCR 7).

For temporary (90 day) amendment of section, see § 2 of Appointment of the Chief Medical Examiner Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-4, January 23, 2009, 56 DCR 1627).

For temporary (90 day) amendment of section, see § 203 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 203 of Omnibus Public Safety and

Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Legislative history of Law 15-339. — Law 15-339, the “Appointment of the Chief Medical Examiner Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-1084 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-754 and transmitted to both Houses of Congress for its review. D.C. Law 15-339 became effective on April 12, 2005.

Legislative history of Law 17-115. — Law 17-115, the “Appointment of the Chief Medical Examiner Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-351 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 23, 2008, it was assigned Act No. 17-258 and transmitted to both Houses of Congress for its review. D.C. Law 17-115 became effective on March 20, 2008.

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

§ 5-1403. Supporting services and facilities.

(a) The CME shall appoint such qualified professional, investigative, technical and clerical personnel as the OCME may require, including administrators, medicolegal investigators, and a General Counsel. The General Counsel shall be appointed pursuant to subchapter VIII-B of Chapter 6 of Title 1.

(b) The Mayor shall provide such facilities and equipment, as the OCME shall require. The Chief Medical Examiner may arrange or contract for such services, equipment and facilities as deemed necessary to carry out the duties and responsibilities of the OCME, pursuant to Chapter 3 of Title 2.

(Oct. 19, 2000, D.C. Law 13-172, § 2904, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2302.

Emergency legislation. — For temporary (90 day) addition of section, see § 2904 of the

Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1404. Former duties of coroner; oaths; teaching; other duties.

(a) The CME shall be responsible for all the medical functions formerly performed by the coroner in the District of Columbia consistent with the provisions of this chapter. The CME and such other medical examiners as may be appointed may administer oaths and affirmations and take affidavits in connection with the performance of their duties.

(b) The CME, other medical examiners, medicolegal investigators and toxicologists as he or she may appoint, may be authorized by the CME to teach medical and law school classes, to conduct special classes for law enforcement personnel and to engage in other activities related to their work.

(c) The CME shall inform the Registrar of Vital Records of all deaths of children 18 years of age or younger as soon as practicable, but in any event within 5 business days.

(d) The CME, or his or her designee, shall attend all reviews of child deaths by the Child Fatality Review Committee. The CME shall coordinate with the Child Fatality Review Committee in its investigations of child deaths.

(Oct. 19, 2000, D.C. Law 13-172, § 2905, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 4619(a), 48 DCR 6981.)

Prior Codifications. — 1981 Ed., § 11-2303.

Effect of amendments. — D.C. Law 14-28 added subsecs. (c) and (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 19(a) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 2905 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 19(a) of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 19(a) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

§ 5-1405. Deaths — determinations and investigations; cremations.

(a) The CME, other medical examiners, and medicolegal investigators (physician assistants or advanced practice registered nurses) licensed under subchapter V of Chapter 12 of Title 3, are authorized to make determinations of death.

(b) Pursuant to regulations established by the Mayor, the following types of human deaths occurring in the District of Columbia shall be investigated by the OCME:

(1) Violent deaths, whether apparently homicidal, suicidal or accidental

including deaths due to thermal, chemical, electrical or radiation injury and deaths due to criminal abortion, whether apparently self-induced or not;

(2) Sudden, unexpected or unexplained deaths not caused by readily recognizable disease, including sudden infant deaths or apparent sudden infant death syndrome (SIDS) for infants one year of age and younger;

(3) Deaths under suspicious circumstances;

(4) Deaths of persons whose bodies are to be cremated, dissected, buried at sea or otherwise disposed of so as to be thereafter unavailable for examination;

(5) Deaths related to disease resulting from employment or on-the-job injury or illness;

(6) Deaths related to disease which might constitute a threat to public health;

(7) Deaths of persons who are wards of the District of Columbia government;

(8) Deaths related to medical or surgical intervention, including operative, peri-operative, anesthesia, medication reactions or deaths associated with diagnostic or therapeutic procedures;

(9) Deaths of persons while in legal custody of the District;

(10) Fetal deaths related to maternal trauma including substance abuse, and extra-mural deliveries;

(11) Deaths for which the Metropolitan Police Department, or other law enforcement agency, or the United States Attorney's Office requests, or a court orders investigation; and

(12) Dead bodies brought within the District of Columbia without proper medical certification.

(c) Clearances by the CME shall be required for all deaths occurring in the District of Columbia for which cremations are requested regardless of where the cremation will occur.

(d) The Mayor shall, by regulation, prescribe procedures for taking possession of a dead body following a death subject to investigation under subsection (b) of this section and for obtaining all essential facts concerning the medical causes of death and the names and addresses of as many witnesses as it is practicable to obtain.

(Oct. 19, 2000, D.C. Law 13-172, § 2906, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 4619(b), 48 DCR 6981.)

Prior Codifications. — 1981 Ed., § 11-2304.

Effect of amendments. — D.C. Law 14-28, in subsec. (b)(2), inserted "for infants one year of age and younger" before the semicolon.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 19(b) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 2906 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 19(b) of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 19(b) of Child Fatality Review Com-

mittee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1406. Deaths — Notification; penalties for noncompliance.

(a) For all deaths described in § 5-1405(b), the CME shall take charge of the body upon the mandatory and direct notification of the death required by subsection (b) of this section. The CME, or duly authorized representatives of the CME, shall have authority to respond to the scene of the death. The body of the decedent shall not be disturbed unless the CME, or the CME’s designee, grants permission to do so.

(b) All law enforcement officers, emergency medical service (EMS) personnel, physicians, nurses, health care institutions, nursing homes, community residential facilities, prisons and jails, funeral directors, embalmers and other persons shall promptly notify the OCME of the occurrence of all deaths coming to their attention which are subject to investigation under § 5-1405(b) and shall assist in making the bodies and related evidence available to a medical examiner for investigation and autopsy.

(c) Any person subject to the reporting requirements in subsection (b) of this section who willfully fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$1,000.

(Oct. 19, 2000, D.C. Law 13-172, § 2907, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2304.

Emergency legislation. — For temporary (90 day) addition of section, see § 2907 of the Fiscal Year 2001 Budget Support Congressional

Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1407. Subpoena power for access to confidential medical records.

The CME is authorized to issue a subpoena for confidential medical records and relevant information from physicians, hospitals, nursing homes, residential care facilities and other health care providers as in his or her opinion is necessary for investigating deaths under this chapter. Any such subpoena issued by the CME may be enforced by order of the Superior Court. The Mayor shall, by regulation, prescribe procedures for issuing administrative subpoenas pursuant to this section.

(Oct. 19, 2000, D.C. Law 13-172, § 2908, 47 DCR 6308.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2908 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1408. Possession of evidence and property.

(a) At the scene of any death subject to investigation under § 5-1405(b), the medical examiner, a medicolegal investigator, or a law enforcement officer shall take possession of any objects or articles which, in his or her opinion, may be useful in establishing the cause and manner of death or the identity of the decedent and shall hold them as evidence. The Mayor shall issue regulations concerning the evidence in the possession of the CME and the transfer of that evidence to law enforcement agencies or the United States Attorney’s Office. The regulations shall include requirements on the length of time evidence shall be preserved by the CME, and shall require that toxicology and histology specimens be preserved for periods of time consistent with the accreditation requirements of the National Association of Medical Examiners.

(b) In the absence of the next of kin, a police officer, a medical examiner or a medicolegal investigator may take possession of all property of value found on or in the custody of the decedent. If possession is taken of the property, the police officer, medical examiner or medicolegal investigator shall make an exact inventory of it and deliver the property to the Property Clerk of the Metropolitan Police Department. The Mayor shall issue regulations concerning the transfer of any such property from the OCME.

(Oct. 19, 2000, D.C. Law 13-172, § 2909, 47 DCR 6308; July 15, 2004, D.C. Law 15-174, § 201(a), 51 DCR 3677.)

Prior Codifications. — 1981 Ed., § 11-2305.

Effect of amendments. — D.C. Law 15-174 added the last sentence to subsec. (a).

Emergency legislation. — For temporary (90 day) addition of section, see § 2909 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

For 15-174, see notes following § 5-113.07.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1409. Examination; further investigation and autopsy.

(a) If, in the opinion of the CME, the cause and manner of death are established with a reasonable medical certainty, the CME shall complete a report of the medical examination of the decedent.

(b) If, in the opinion of the CME, or the United States Attorney, further investigation as to the cause or manner of death is required or the public interest so requires, a medical examiner shall either perform, or the CME shall arrange for a qualified pathologist to perform, an autopsy on the body of the decedent and to retain tissues and biological specimens deemed necessary to

an investigation. No consent of the next of kin shall be required for an autopsy to be performed under this section.

(c) The medical examiner performing the autopsy shall make a complete record of the findings and conclusions of any autopsy and shall prepare a report thereon.

(Oct. 19, 2000, D.C. Law 13-172, § 2910, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2306.

Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Emergency legislation. — For temporary (90 day) addition of section, see § 2910 of the Fiscal Year 2001 Budget Support Congressional

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1410. Autopsy by pathologist other than a medical examiner.

(a) If an autopsy is performed by a pathologist other than a medical examiner by request of the CME, the pathologist shall furnish to the CME, a complete record of the findings and conclusions of the autopsy. The CME, or assigned medical examiner, shall thereupon prepare a report, indicating the name of the pathologist performing the autopsy, the pathologist's findings and conclusions, and the CME's, or assigned medical examiner's, own comments, if appropriate.

(b) A pathologist other than a medical examiner who performs an autopsy at the request of the CME shall be compensated in accordance with a fee rate established by the Mayor by regulation.

(Oct. 19, 2000, D.C. Law 13-172, § 2911, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2307.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000" Creating the Office of the Chief Medical Examiner, see Mayor's Order 2001-04, January 5, 2001 (48 DCR 938).

Emergency legislation. — For temporary (90 day) addition of section, see § 2911 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1411. Delivery of body; expenses.

(a) Following investigation or autopsy, the CME shall release the body of the decedent to the person having the right to the body for the purpose of burial or other disposition pursuant to law. If after a reasonable time, established by regulation by the Mayor, no authorized person claims the body of the decedent, the CME shall dispose of the body in accordance with the law.

(b) Expenses of transportation of bodies and autopsies performed pursuant to this chapter shall be borne by the District of Columbia.

(c) Only the CME shall dispose unclaimed bodies in the District without of next of kin or other means of disposition. The Mayor shall prescribe fees and regulations for the storage and disposal of unclaimed bodies.

(Oct. 19, 2000, D.C. Law 13-172, § 2912, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2308.

Emergency legislation. — For temporary (90 day) addition of section, see § 2912 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1412. Maintenance of records; annual report.

(a) The CME shall be responsible for maintaining full and complete records and files, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause and manner of death and all other relevant information and reports of the medical examiner concerning the death. The CME shall issue a death certificate in all appropriate cases.

(a-1) Records and files related to an open investigation of a homicide shall be retained for 65 years from the date the CME initiates its investigation of the homicide. Other records and files maintained under subsection (a) of this section shall be retained by the CME for periods of time established by regulations issued pursuant to § 5-1417. For the purposes of this subsection, the term “open investigation” shall have the same meaning as provided in § 5-113.31(10).

(b) The records and files maintained under the provisions of subsection (a) of this section shall be open to inspection by the Mayor, or Mayor’s authorized representative, the United States Attorney and the United States Attorney’s assistants, the Metropolitan Police Department, or any other law enforcement agency or official, and the Child Fatality Review Committee when necessary for the discharge of its official duties; upon request, to such persons, the CME shall promptly deliver to such persons copies of records relating to the deaths as to which further investigation may be advisable.

(c) Any other person with a legitimate interest may obtain copies of records maintained pursuant to subsection (a) of this section upon such conditions and payment of such fees as may be prescribed by regulation by the Mayor. If such person fails to meet the prescribed conditions, such person may obtain copies of such records pursuant to court order if the court is satisfied that such person has a legitimate interest.

(d) The CME shall prepare an annual report to the Mayor which includes information on the number of autopsies performed, statistics as to the causes of deaths, and any other relevant information the Mayor may require. The annual report shall be open to inspection by the public. The annual report shall not identify by name, deceased persons examined.

(Oct. 19, 2000, D.C. Law 13-172, § 2913, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 4619(c), 48 DCR 6981; July 15, 2004, D.C. Law 15-174, § 201(b), 51 DCR 3677.)

Prior Codifications. — 1981 Ed., § 11-2309.

Effect of amendments. — D.C. Law 14-28 substituted “official, and the Child Fatality Review Committee when necessary for the discharge of its official duties” for “official” in subsec. (b).

D.C. Law 15-174 added subsec. (a-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 19(c) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) addition of section, see § 2913 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 19(c) of Child Fatality Review Com-

mittee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 19(c) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Legislative history of Law 14-20. — For Law 14-20, see notes following § 5-1404.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 5-409.01.

For 15-174, see notes following § 5-113.07.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1413. Records as evidence.

The records maintained pursuant to § 5-1412, or reproductions thereof certified by the CME, are admissible as evidence in any court in the District; except that, statements made by witnesses or other persons and conclusions upon nonmedical matters are not admissible.

(Oct. 19, 2000, D.C. Law 13-172, § 2914, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2310.

Emergency legislation. — For temporary (90 day) addition of section, see § 2914 of the Fiscal Year 2001 Budget Support Congressional

Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1414. Autopsies performed under court order.

In the case of unexplained, sudden, violent, or suspicious death, when the body is buried without investigation, or there has been an inadequate investigation, the United States Attorney, on his or her own motion, or on request of a medical examiner, or the Metropolitan Police Department, or other law enforcement agency, may petition the appropriate court for an order to conduct an inquiry. The court may order the body exhumed and an autopsy performed. In such cases, records and reports shall be filed as if the autopsy were performed prior to burial; except that, a copy of the report shall be furnished directly to the court.

(Oct. 19, 2000, D.C. Law 13-172, § 2915, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 11-2311.

Emergency legislation. — For temporary (90 day) addition of section, see § 2915 of the Fiscal Year 2001 Budget Support Congressional

Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1415. Tissue transplants. [Repealed].

Repealed.

(Oct. 19, 2000, D.C. Law 13-172, § 2916, 47 DCR 6308; Apr. 15, 2008, D.C. Law 17-145, § 30(b), 55 DCR 2532.)

Prior Codifications. — 1981 Ed., § 11-2312.

Emergency legislation. — For temporary (90 day) addition of section, see § 2916 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Legislative history of Law 17-145. — Law 17-145, the “Uniform Anatomical Gift Revision

Act of 2008”, was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

§ 5-1416. Personnel, records, functions, and authority transferred.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be available to the Office of the Chief Medical Examiner and all the functions assigned and authority delegated to the Office of the Chief Medical Examiner are hereby transferred to the Office of the Chief Medical Examiner established pursuant to § 5-1402:

(1) Commissioner’s Order 70-83, effective March 6, 1970, vesting the Director of the Department of Human Resources with authority over the Chief Medical Examiner and the operations of the Office of the Chief Medical Examiner under Public Law 91-358;

(2) Commissioner’s Order 71-16, effective January 26, 1971, establishing the Office of the Chief Medical Examiner, headed by the Chief Medical Examiner, in the Department of Human Resources with the functions set forth in Public Law 91-358;

(3) Part IV(B)(2) of Reorganization Plan No. 2 of 1979, effective February 21, 1980, vesting the Commissioner of Public Health, Department of Human Services, with administrative authority over the technical programs and services for medical investigation of all deaths, except clearly natural deaths under Public Law 91-358 and Commissioner’s Order 71-16, as amended;

(4) Part III(K) of Reorganization Plan No. 3 of 1986, effective January 3, 1987, vesting the Director of the Department of Human Services with responsibility for medically investigating and reporting on known or suspected homicides, suicides, medically unattended or accidental deaths and deaths which might threaten public health and safety;

(5) Mayor’s Order 89-62, Establishment of Commission on the Medical Examiner’s Office, effective March 28, 1989;

(6) Part IV(B)(2) of Reorganization Plan 4 of 1996, Establishment of the District of Columbia Department of Health, placing the Office of the Chief Medical Examiner under the supervision of the Director of the Department of Health; and

(7) Department of Health Organization Order No. 15, Office of the Chief Medical Examiner, dated May 30, 1997, establishing the Office of the Chief Medical Examiner in the Department of Health.

(Oct. 19, 2000, D.C. Law 13-172, § 2917, 47 DCR 6308.)

Emergency legislation. — For temporary (90 day) addition section, see § 2917 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

§ 5-1417. Regulations and fees.

(a) The Mayor shall promulgate proposed regulations to implement the provisions of this chapter. The proposed regulations shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the regulations, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

(b) The Mayor is authorized to establish fees and rates required by this chapter.

(Oct. 19, 2000, D.C. Law 13-172, § 2918, 47 DCR 6308.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2918 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 5-1401.

Delegation of Authority. — Delegation of Authority Pursuant to Title XXIX of D.C. Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000” Creating the Office of the Chief Medical Examiner, see Mayor’s Order 2001-04, January 5, 2001 (48 DCR 938).

§ 5-1418. Office of the Chief Medical Examiner Management Fund. [Repealed].

Repealed.

(Oct. 20, 2000, D.C. Law 13-172, § 2918a, as added Oct. 20, 2005, D.C. Law 16-33, § 3002, 52 DCR 7503; Sept. 14, 2011, D.C. Law 19-21, § 9051, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 3002 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) addition of section, see § 202 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 5-405.

Short title. — Short title of subtitle A of title III of Law 16-33: Section 3001 of D.C. Law 16-33 provided that subtitle A of title III of the

act may be cited as the Office of the Chief
Medical Examiner Management Fund Amend-
ment Act of 2005.

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CHAPTER 15. DEPARTMENT OF FORENSIC SCIENCES.

Sec.

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§ 5-1501.01. Definitions.

For the purposes of this chapter, the term:

- (1) “Board” means the Science Advisory Board established by § 5-1501.11.
- (2) “Department” means the Department of Forensic Sciences established by § 5-1501.02.
- (3) “Director” means the Director of the Department of Forensic Sciences.
- (4) “Forensic science services” means forensic science research, analysis, and related services, including the examination of evidence, the interpretation of results, and the provision of expert testimony, such as for the purposes of a criminal investigation or civil action.
- (5) “MPD” means the Metropolitan Police Department.

(Aug. 17, 2011, D.C. Law 19-18, § 2, 58 DCR 5403.)

Legislative history of Law 19-18. — Law 19-18, the “Department of Forensic Sciences Establishment Act of 2011”, was introduced in Council and assigned Bill No. 19-5, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on May 3, 2011, and May 7, 2011, respectively. Signed by the Mayor on June 24, 2011, it was assigned Act No. 19-89 and transmitted to both Houses of Congress for its review. D.C. Law 19-18 became effective on August 17, 2011.

§ 5-1501.02. Establishment of the Department of Forensic Sciences.

(a) There is established as a subordinate agency in the executive branch of the government of the District of Columbia, the Department of Forensic Sciences.

(b) The mission of the Department shall be to provide high-quality, timely, accurate, and reliable forensic science services with:

- (1) The use of best practices and best available technology;
- (2) A focus on unbiased science and transparency; and
- (3) The goal of enhancing public safety.

(Aug. 17, 2011, D.C. Law 19-18, § 3, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.03. Director; appointment, qualifications, compensation, term.

(a) The Department shall be headed by a Director who shall be appointed by the Mayor, with the advice and consent of the Council, pursuant to § 1-523.01(a).

(b) The Director shall be knowledgeable about forensic science services and experienced in the rigors of scientific analysis. The Director shall have:

(1) Graduated from an accredited college or university with a masters or doctoral degree in an applicable area of science;

(2) Demonstrated training and experience in scientific research and methodology;

(3) Demonstrated management and administrative skills;

(4) Demonstrated comprehensive knowledge of forensic sciences;

(5) A minimum of 6 years experience in scientific research, forensic sciences, or a combination thereof; and

(6) A minimum of 4 years experience in directing or supervising both scientific and administrative staff in a forensic science, medical, or research setting.

(c) The Mayor shall fix the compensation of the Director pursuant to subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.].

(d) The Director shall be appointed for a 4-year term.

(e) If a vacancy in the position of the Director occurs as a consequence of any reason, the Mayor shall appoint a successor for a new term, in the same manner provided by this chapter.

(Aug. 17, 2011, D.C. Law 19-18, § 4, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.04. Duties of the Director.

(a) The Director shall:

(1) Be responsible for the management and operation of the Department;

(2) Ensure that accreditation is obtained in compliance with § 5-1501.06(d);

(3) Ensure that accreditation is maintained in compliance with § 5-1501.06(d);

(4) Report to the Board any allegation of professional negligence, misconduct, or misidentification or other testing error that occurs in the provision of forensic science services within the Department;

(5) Prepare an annual report on the activities of the Department, which shall be submitted to the Mayor and the Council and made available to the public in February of each year;

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(6) Be responsible for the preparation of minutes of meetings of the Board; and

(7) Perform such other acts as may be appropriate to accomplish the declared mission of the Department.

(b) The Director shall ensure that the Department promulgates training manuals and standard operating procedures, including:

- (1) Protocols for forensic testing, examination, and analysis;
- (2) Procedures for handling case-specific information to minimize bias;
- (3) Standards for the maintenance and calibration of all laboratory equipment and materials, including standards for maintaining logs documenting the maintenance and calibration performed;
- (4) Procedures for estimations of uncertainty;
- (5) Procedures for monitoring the quality of forensic analysis;
- (6) Procedures for regular internal and external audits;
- (7) A system through which reports of allegations of negligence, misconduct, or misidentification or other testing error are processed;
- (8) Proficiency testing protocols;
- (9) Internal validation studies;
- (10) Standards for reporting results, including model laboratory reports and guidelines for the presentation of results in court; and
- (11) Qualification standards for analyst positions within the Department.

(c)(1) All documents promulgated pursuant to subsection (b) of this section shall be:

(A) Provided by the Director to the Board prior to adoption; and

(B) Made available by the Director to the Board when requested for periodic review.

(2) The Director shall consider the recommendations of the Board. To the extent that the Director rejects the recommendations of the Board, the Director shall explain his or her reasons to the Board.

(d) The Director may receive, administer, and expend all funds, including public and private grants, and other funding assistance available to perform his or her duties and to accomplish the agency mission.

(Aug. 17, 2011, D.C. Law 19-18, § 5, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.05. Personnel.

(a)(1) In addition to a Director, the Department shall have a Deputy Director, and other professional and support personnel as necessary and appropriate to carry out the agency's mission.

(2) The Deputy Director shall have a masters or doctoral degree in an applicable area of science or forensic analysis and a minimum of 2 years experience in forensic sciences.

(Aug. 17, 2011, D.C. Law 19-18, § 6, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.06. Powers and duties of the Department.

(a) The Department shall provide forensic science services for the District of Columbia, which may include:

- (1) Forensic alcohol;
- (2) Computer forensics;
- (3) Analysis of controlled substances;
- (4) DNA/biological material analysis;
- (5) Fingerprint comparison;
- (6) Firearms and tool mark examination;
- (7) Forensic photography;
- (8) Analysis of questioned documents;
- (9) Trace evidence analysis; and
- (10) Emerging fields in forensic science.

(b) The Department shall provide these forensic science services upon request to:

- (1) District agencies, including:
 - (A) The MPD;
 - (B) The Office of the Chief Medical Examiner;
 - (C) The Office of the Attorney General;
 - (D) The Department of Health; and
 - (E) The Fire and Emergency Medical Services Department; and
- (2) To the United States Attorney's Office for the District of Columbia.

(c) The Department also may provide forensic science services to other law enforcement or investigative agencies.

(d)(1) The Department shall be accredited by an appropriate, bona fide national accrediting organization.

(2) Department accreditation shall be obtained before January 1, 2014.

(3) Any forensic unit not included in the Department's accreditation, and any forensic unit subsequently added to the Department, shall be accredited as soon as possible.

(e) The Department shall provide for the security and protection of evidence and samples in its custody.

(f) The Department shall provide training regarding the collection and preservation of forensic evidence to:

- (1) Law enforcement agencies;
- (2) Hospitals; and
- (3) Other entities or individuals that collect evidence for testing or examination by the Department.

(g) The Department shall, to the extent feasible, complete cases submitted by MPD in the priority order requested by the Chief of Police.

(h)(1) The Department shall make available all records pertaining to the analysis conducted in a particular case to the agency that requested the analysis.

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(2) If the records pertain to a criminal prosecution, the Department shall provide the prosecutor with 2 identical sets of records, one for the government and one for the defense.

(3) For the purposes of this subsection, the term “records” shall include:

- (A) Lab notes and bench notes;
- (B) Worksheets, graphs, and charts;
- (C) Photographs;
- (D) Raw data;
- (E) Reports;
- (F) Statistical information used to calculate probabilities or uncertainty;

(G) Any logs related to the equipment or materials used in testing;

(H) Any written communications or records of oral communications regarding a specific individual case between the Department and any other agency or between the Department and any person not employed by the Department, except as otherwise prohibited by law; and

(I) Proficiency test results for individual examiners involved in the analysis.

(i) The following documents shall be public documents:

- (1) All accreditation documents;
- (2) All of the documents listed in § 5-1501.04(b);
- (3) Any investigative report prepared pursuant to § 5-1501.10(c);
- (4) Minutes of meetings of the Board; and
- (5) Any other documents as required by law to be public.

(Aug. 17, 2011, D.C. Law 19-18, § 7, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.07. Testing of breath alcohol equipment.

(a) The Department shall test and certify, at least once every 3 months or as recommended by the manufacturer, whichever is more frequent, the accuracy of all equipment used by any District law enforcement personnel to test the alcohol content of breath.

(b) Only equipment certified by the Department to be accurate shall be used by a District law enforcement agency to test the alcohol content of breath.

(c) The Director may delegate by memorandum of agreement to the Office of the Chief Medical Examiner the responsibility for testing breath alcohol equipment and some or all of the responsibility for providing forensic science services pertaining to forensic alcohol.

(Aug. 17, 2011, D.C. Law 19-18, § 8, 58 DCR 5403.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 201 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.08. Transfer of personnel, records, functions, and authority.

(a) The Mayor shall provide for the orderly transfer to the Department all of the authority, responsibilities, duties, assets, and functions of MPD pertaining to forensic science services, including:

- (1) Forensic alcohol;
- (2) Computer forensics;
- (3) Analysis of controlled substances;
- (4) DNA/biological material analysis;
- (5) Fingerprint comparison;
- (6) Firearms and tool mark examination;
- (7) Forensic photography;
- (8) Analysis of questioned documents;
- (9) Trace evidence analysis;
- (10) Personnel and authority for vacant and filled positions;
- (11) Property;
- (12) Records; and

(13) All unexpended balances of appropriations, allocations, and other funds available or to be made available to the MPD for the purposes of forensic science services.

(b) The transfer set forth in subsection (a) of this section shall occur no later than October 1, 2012.

(Aug. 17, 2011, D.C. Law 19-18, § 9, 58 DCR 5403.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 303 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.09. Reexamination by independent experts.

The facilities, equipment, or supplies of the Department shall not be used by an independent expert employed by the accused or his or her attorney for any reexamination of materials previously examined by the Department.

(Aug. 17, 2011, D.C. Law 19-18, § 10, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.10. Allegations of negligence, misconduct, or misidentification or other testing error.

(a) Any allegation of professional negligence, misconduct, or misidentification or other testing error that occurs in the provision of forensic science services at the Department shall be:

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(1) Reported immediately to the Board; and

(2) Investigated promptly by the Director, in accordance with the Department's quality assurance program and the requirements of the Department's accreditation.

(b)(1) An allegation that the Director determines is credible and substantial and that may substantially affect the integrity of the results of forensic analysis conducted by the Department shall be investigated by an evaluator, external to the Department, who shall be selected by the Director and the investigation shall be initiated within 30 business days after the Director becomes aware of the allegation.

(2) An investigation pursuant to this subsection shall be in addition to the requirements of subsection (a) of this section.

(c) An investigation pursuant to subsection (a) or (b) of this section shall culminate in the preparation of a written report that shall identify and describe:

(1) The alleged negligence, misconduct, or misidentification or other testing error;

(2) Whether the negligence, misconduct, or misidentification or other testing error occurred; and

(3) All corrective actions required of the Department.

(d) All investigative reports prepared in accordance with this section shall be submitted promptly to the Board.

(Aug. 17, 2011, D.C. Law 19-18, § 11, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.11. Science Advisory Board.

(a) There is established a Science Advisory Board, which shall consist of 9 voting members to be appointed pursuant to § 1-523.01(f), as follows:

(1) Five scientists with experience in scientific research and methodology, who have published in peer-reviewed scientific journals, including:

(A) One statistician; and

(B) One with expertise in quality assurance; and

(2) Four forensic scientists not currently employed by the Department or by a law enforcement laboratory or agency that provides forensic science services to the District.

(b) The Director and Deputy Director shall be ex officio, non-voting members of the Board.

(c)(1) Except as provided in paragraph (2) of this subsection, each voting member shall be appointed for a 3-year term. Whenever a vacancy occurs in an unexpired term, the Mayor shall appoint a replacement to fill that unexpired term in the same manner as the original appointment.

(2) The initial term of each member shall be staggered so that 3 members are appointed for one year, 3 members are appointed for 2 years, and 3 members are appointed for 3 years. The members to serve the one-year term,

2-year term, and 3-year term shall be determined by the Mayor at the time of nomination.

(3) The initial terms shall begin on the date a majority of the voting members have been sworn in, which shall become the anniversary date for all subsequent appointments.

(d) The Board shall elect a chairperson from among its voting members.

(e) The presence of a majority of the voting members holding office shall constitute a quorum.

(f) The Board shall hold no fewer than 4 regular meetings per year. The chairperson of the Board shall fix the time and place of each meeting. Additional meetings may be called either by the chairperson or upon the written request of the Director or of any 3 members of the Board.

(g) Minutes shall be prepared for each meeting. A transcript or detailed summary shall meet this requirement.

(Aug. 17, 2011, D.C. Law 19-18, § 12, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.12. Functions of the Board.

The Board shall:

(1) Review all reports of allegations of professional negligence, misconduct, or misidentification or other testing error that occurred in the provision of forensic science services at the Department;

(2) Periodically review the program standards and protocols related to Department operations;

(3) At least once every 3 years, conduct a review of relevant scientific literature to determine whether modification of any of the manuals and procedures referenced in § 5-1501.04(b) is desirable;

(4) Review and make recommendations as necessary to the Director concerning:

(A) The quality and timeliness of the forensic science services at the Department;

(B) New scientific programs, protocols, methods of testing, and forensic technologies;

(C) Plans for:

(i) The implementation of new programs;

(ii) Sustaining existing programs;

(iii) Improving programs, where possible; and

(iv) The elimination of programs no longer needed;

(D) Qualification standards for analyst positions within the Department; and

(E) Any other matters related to the scientific operation of the Department; and

(5) Advise the Director or the Mayor and Council, when it considers appropriate, on matters relating to the Department or forensic science.

§ 5-1501.13 POLICE, FIREFIGHTERS, & MEDICAL EXAMINER

(Aug. 17, 2011, D.C. Law 19-18, § 13, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.13. Stakeholder Council.

(a) There is established a Stakeholder Council, which shall consist of the following members:

- (1) The Deputy Mayor for Public Safety and Justice;
- (2) The Chief of MPD;
- (3) The Chief Medical Examiner;
- (4) The Attorney General;
- (5) The United States Attorney for the District of Columbia;
- (6) The Director of the Public Defender Service for the District of Columbia;
- (7) The Federal Public Defender for the District of Columbia;
- (8) The Director of the Department of Health;
- (9) The Chief of the Fire and Emergency Medical Services Department;
- (10) The Director of the Department; and
- (11) The head of any other government agency that regularly utilizes the forensic science services of the Department.

(b) The chairperson of the Judiciary Committee of the Council of the District of Columbia shall be an ex officio, non-voting member of the Stakeholder Council.

(c) The members listed in subsection (a) of this section shall not be represented by a designee.

(d) The chairperson of the Stakeholder Council shall be the Deputy Mayor for Public Safety and Justice. In his or her absence, the Attorney General shall be the chairperson.

(e) The Stakeholder Council shall meet no fewer than 2 times per year. The chairperson shall fix the time and place of the meetings.

(Aug. 17, 2011, D.C. Law 19-18, § 14, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.14. Functions of the Stakeholder Council.

The Stakeholder Council shall:

- (1) Identify issues or concerns regarding:
 - (A) The Department's delivery of forensic science services to agencies, including the timeliness of service; and
 - (B) The general effectiveness of the Department in the furtherance of its agency mission; and
- (2) Advise the Mayor and the Council, as it considers necessary, on matters relating to the Department or forensic science.

(Aug. 17, 2011, D.C. Law 19-18, § 15, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.15. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(Aug. 17, 2011, D.C. Law 19-18, § 16, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

§ 5-1501.16. Continuity; regulations and rules.

Regulations and rules of any agency, department, administration, board, or commission, the functions of which are transferred by this chapter to the Department, and any Mayor's order or administrative order not in conflict with this chapter and relating to a function transferred by this chapter, shall continue in force until such time as the Mayor issues new rules, regulations, or orders governing the subject.

(Aug. 17, 2011, D.C. Law 19-18, § 17, 58 DCR 5403.)

Legislative history of Law 19-18. — For history of Law 19-18, see notes under § 5-1501.01.

